



भारत का राजपत्र The Gazette of India

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108

सं० 10]

नई दिल्ली, शनिवार, मार्च 9, 2002/फाल्गुन 18, 1923

No. 10]

NEW DELHI, SATURDAY, MARCH 9, 2002/PHALGUNA 18, 1923

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

वित्त मंत्रालय
(राजस्व विभाग)

आदेश

नई दिल्ली, 31 जनवरी, 2002

स्टाम्प

बध-पत्रों (दिसम्बर, 2001 निर्गम) पर स्टाम्प शुल्क के
कारण प्रभार्य है।

[स 3/2002-स्टाम्प/एफ स. 33/6/2002-बि क.]

आर जी छाबडा, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 31st January, 2002

STAMPS

का आ 799—भारतीय स्टाम्प अधिनियम, 1899
(1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड
(ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय
सरकार एतद्वारा मै. आई सी आई. सी आई लि.,
को मात्र तीन करोड़ उन्नीस लाख बत्तीस हजार दो सौ
तिरसठ रुपए का समेकित स्टाम्प शुल्क अदा करने की
अनुमति प्रदान करती है, जो कि उक्त कम्पनी द्वारा जारी
किए जाने वाले मात्र चार सौ पच्चीस करोड़ छिहत्तर लाख
पैंतीस हजार रुपए के समग्र मूल्य के ऋण-पत्रों के स्वरूप के
851527 आई सी. आई सी आई. असुरक्षित, विमोच्य

S O 799—In exercise of the powers conferred
by clause (b) of sub-section (1) of section 9 of the
Indian Stamp Act, 1899 (2 of 1899), the Central
Government hereby permits M/s ICICI Limited,
Mumbai to pay consolidated stamp duty of rupees
three crore nineteen lakh thirty two thousand two
hundred sixty three only chargeable on account of
the stamp duty on 851527 ICICI Unsecured Redem-

able Bonds (December, 2001 Issue) in the nature of Debentures aggregating to rupees four hundred twenty five crores seventy six lakhs thirty five thousands only, to be issued by the said company.

[No.3/2002-STAMPS F.No. 33/6/2002-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 15 फरवरी, 2002

स्टाम्प

का.आ. 800:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा इण्डियन ओवरसीज बैंक, चेन्नई को केवल एक करोड़ पचास लाख रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है जो उक्त बैंक द्वारा जारी किए जाने वाले केवल एक सौ पचास करोड़ रुपये के आई.ओ.बी. असुरक्षित विमोच्य अपरिवर्तनीय सब-ओरडी-नेटिड-तृतीय श्रेणी के रूप में वर्णित ऋणपत्रों पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 5/2002/स्टाम्प/फा.सं. 33/8/2002-बि.क.]

आर.जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 15th February, 2002

STAMPS

S.O. 800.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Indian Overseas Bank, Chennai to pay consolidated stamp duty of rupees one crore fifty lakh only chargeable on account of the stamp duty on bonds described as IOB Unsecured Redeemable Non-Convertible Sub-ordinated Bonds-III Series in the nature of promissory notes aggregating to rupees one hundred fifty crore only, to be issued by the said Bank.

[No. 5/2002-STAMPS/F.No. 33/8/2002-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 15 फरवरी, 2002

स्टाम्प

का.आ. 801:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा आन्ध्र प्रदेश, पाँचर फाइनेन्स कारपोरेशन लिमिटेड हैदराबाद को बारह करोड़ इक्कीस लाख छप्पन हजार दो सौ पचास रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो निम्नलिखित रूप से

वर्णित बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभार्य हो, जो उक्त निगम द्वारा जारी किया जाना हो:

(क) केवल तीन सौ बयालीस करोड़ पैंतालीस लाख रुपये के ऋण पत्रों के स्वरूप में ए.पी.पी. एफ.सी.एल. अपरिवर्तनीय और विमोच्य बंधपत्र (शृंखला-3/2001)

(ख) केवल दो सौ तिरानवे करोड़ उन्नीस लाख रुपये के ऋणपत्रों के स्वरूप में ए.पी.पी.एफ.सी.एल. अपरिवर्तनीय और विमोच्य बंधपत्र (शृंखला-4/2001)

(ग) केवल नौ सौ तिरानवे करोड़ बारह लाख रुपये के ऋणपत्रों के स्वरूप में ए.पी.पी.एफ.सी.एल. अपरिवर्तनीय और विमोच्य बंधपत्र (शृंखला-5/2001)।

[सं. 6/2002-स्टाम्प/फा.सं. 33/7/2002-बि.क.]

आर.जी. छाबड़ा, अवर सचिव

ORDER

New Delhi, the 15th February, 2002

STAMPS

S.O. 801.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Andhra Pradesh Power Finance Corporation Limited, Hyderabad to pay consolidated stamp duty of rupees twelve crore twenty one lakh fifty six thousand two hundred fifty only chargeable on account of the stamp duty on bonds described as:—

(a) APPFCL Non-Convertible and Redeemable Bonds (Series-3/2001) in the nature of Debenture aggregating to rupees three hundred forty two crore forty five lakh only;

(b) APPFCL Non-Convertible and Redeemable Bonds (Series-4/2001) in the nature of Debentures aggregating to rupees two hundred ninety three crore nineteen lakh only;

(c) APPFCL Non-Convertible and Redeemable Bonds (Series-5/2001) in the nature of Debentures aggregating to rupees nine hundred ninety three crore eleven lakh only, to be issued by the said Corporation.

[No. 6/2002-STAMPS/F.No. 33/7/2002-ST]

R. G. CHHABRA, Under Secy.

नई दिल्ली, 21 फरवरी, 2002

का. आ. 802.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में राजस्व विभाग के अधीन केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड के निम्नलिखित क्षेत्रीय कार्यालय को, जिनके कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. उप आयुक्त का कार्यालय, केन्द्रीय उत्पाद एवं सीमा शुल्क मण्डल द्वितीय, तृतीय तल, सी. जी. ओ. भवन II, कमला नेहरू नगर, गाजियाबाद—201002।

[फा. सं. ई.-11017/9/2001 हिन्दी-IV]
प्रशान्त मेहता, संयुक्त सचिव (प्रशासन)

New Delhi, the 21st February, 2002

S.O. 802.—In pursuance of sub-rule (4) of rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office under Board of Central Excise & Customs of Department of Revenue, the Staff where-of have acquired the working knowledge of Hindi.

Office of the Deputy Commissioner,
Central Excise & Customs,
Division-II, 3rd Floor,
C.G.O. Bhavan-II
Kamla Nehru Nagar,
Ghaziabad-201002

[F.No.E.-11017/9/2001-Hindi-IV]

PRASHANT MEHTA, Jt. Secy. (Admn.)

आयकर महानिदेशक (छूट) का कार्यालय
आयकर

कोलकाता, 18 जनवरी, 2002

का.आ. 803.—सामान्य सूचना हेतु एतद्वारा यह अधिसूचित किया जाता है कि निम्नलिखित संगठन को आयकर नियमों के नियम 6 के अन्तर्गत निर्धारित प्राधिकारी द्वारा आयकर अधिनियम 1961 की धारा 35 की उपधारा (i) के खंड (ii) के उद्देश्य हेतु निम्नलिखित शर्तों पर "संस्था" वर्ग के अधीन अनुमोदित किया जाता है :

- (i) अपने अनुसंधान कार्य कलापों के लिए संगठन अलग लेखा बही रखेंगे :
- (ii) अनुसंधान कार्य-कलापों के लिए यह वार्षिक रिटर्न सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग "टेक्नोलॉजी भवन" न्यू महरौली रोड, नई दिल्ली-110016 को प्रत्येक वित्त वर्ष के लिए 31 मई या इससे पहले हर वर्ष पेश करेगा :

- (iii) यह (क) आयकर महानिदेशक (छूट) (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) जिनका संगठन पर क्षेत्राधिकार है, को 31 अक्टूबर तथा प्रत्येक लेखा परीक्षित वार्षिक लेखा की एक प्रति तथा अपने अनुसंधान कार्य-कलापों जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (क) के अधीन छूट दी गई थी से संबंधित लेखा परीक्षित आय व व्यय लेखा की एक प्रति भी पेश करेगा।

संगठन का नाम

सेंटर फॉर डेवलपमेंट ऑफ टेलिमेटिक्स (सी-डॉट)

नौवा तल, अकबर भवन,

चाणव्यपुरी,

नई दिल्ली-110 021

यह अधिसूचना निम्नलिखित अवधि के लिए प्रभावी होगी।

01-04-98 से 31-03-99

नोट : 1. संघ के रूप में वर्गीकृत संगठनों पर उपरोक्त

(i) में दी गई शर्तें प्रयोज्य नहीं होगी।

2. संगठन को सलाह दी जाती है कि मंजूरी के आगे विस्तार के लिए काफी पहले से निर्धारित प्राधिकारी को आयकर आयुक्त/आयकर निदेशक (छूट) जिनका संगठन पर क्षेत्राधिकार है, के जरिये तीन प्रतियों में आवेदन करें। मंजूरी के विस्तार के जरिये तीन प्रतियों में आवेदन करें। मंजूरी के लिए आवेदन की तीन (3) प्रतियां, सचिव, वैज्ञानिक तथा औद्योगिक अनुसंधान विभाग को सीधे भेंजें।

[सं. 2090/फा. सं. म. नि./एन. डी.-35/कल./35 (1) (ii)
89-आ. क. ई.]

पी. सी. विश्वास, अपर आयकर निदेशक (छूट)

OFFICE OF THE DIRECTOR GENERAL OF
INCOME-TAX (EXEMPTIONS)

Kolkata, the 18th January, 2002

(INCOME TAX)

S.O. 803.—It is hereby notified for general information that the organisation mentioned below has been approved by the Prescribed Authority under Rule 6 of the Income-tax Rules, for the purpose of clause (ii) of Sub-section (1) of section 35 of the Income-tax Act, 1961 under the category 'Institution' subject to the following conditions :

- (i) The organisation will maintain separate books of accounts for its research activities,
- (ii) it will furnish the Annual Return of its research activities to the Secretary, Department of Scientific & Industrial Research, "Technology Bhawan", New Mehrauli Road, New Delhi-110016 for every financial year by 31st May of each year, and
- (iii) It will submit to the (a) Director General of Income-Tax (Exemptions), Kolkata (b) Secretary, Department of Scientific & Industrial Research, and (c) Commissioner of Income-tax Director of Income-tax (Exemptions), having jurisdiction over the organisation, by the 31st October of each year, a copy of its audited annual accounts and also a copy of audited Income and Expenditure Account in respect of its research activities for which exemption was granted under Sub-section (1) of Section 35 of Income-tax Act, 1961.

NAME OF THE ORGANISATION :

Centre for Development of Telematics (C-DOT),
9th Floor, Akbar Bhawan,
Chanakya Puri,
New Delhi-110021.

This Notification is effective for the following period :

From 1-4-98 to 31-3-99

NOTE :

1. Condition (i) above will not apply to organisations categorised as Association.
2. The organisation is advised to apply in triplicate and well in advance for further extension of the approval to the Prescribed Authority through the Commissioner of Income-tax Director of Income-tax (Exemptions) having jurisdiction over the organisation. Three copies of the application for extension of approval should be sent directly to the Secretary, Department of Scientific & Industrial Research.

[No. 2090/F. No. DG/ND-35/CAL/35(1)(ii)/89-IT(E)]

P. C. BISWAS, Addl. Director of Income-tax
(Exemptions)

कोलकाता, 18 जनवरी, 2002

(आयकर)

का.आ. 804.—सामान्य सूचना हेतु एतद्वारा यह अधि-
सूचित किया जाता है कि निम्नलिखित संगठन को आयकर

नियमों के नियम 6 के अन्तर्गत निर्धारित प्राधिकारी द्वारा आयकर अधिनियम 1961 की धारा 35 की उपधारा (i) के खंड (ii) के उद्देश्य हेतु निम्नलिखित शर्तों पर "संघ", वर्ग के अधीन अनुमोदित किया जाता है :

- (i) अपने अनुसंधान कार्य-कलापों के लिए संगठन अलग लेखा बही रखेंगे;
- (ii) अनुसंधान कार्य-कलापों के लिए यह वार्षिक रिटर्न सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग, "टेक्नोलॉजी भवन", न्यू मेहरोली रोड, नई दिल्ली-110016 को प्रत्येक वित्त वर्ष के लिए 31 मई या इससे पहले हर वर्ष पेश करेगा;
- (iii) यह (क) आयकर महानिदेशक (छूट) (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग, तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) जिनका संगठन पर क्षेत्राधिकार है, को 31 अक्टूबर तक प्रत्येक वर्ष लेखा परीक्षित वार्षिक लेखा की एक प्रति तथा अपने अनुसंधान कार्य-कलापों जिसके लिए आयकर अधिनियम, 1961 की धारा 35 के उपधारा (क) के अधीन छूट दी गई थी से संबंधित लेखा परीक्षित आय व व्यय लेखा की एक प्रति भी पेश करेगा।

संगठन का नाम

सेंटर फॉर इलेक्ट्रॉनिक टेक्नोलॉजी,
इलेक्ट्रॉनिक निकेतन,
6, सी. जी. ओ. कम्पलेक्स,
लोदी रोड,
नई दिल्ली-110003

यह अधिसूचना निम्नलिखित अवधि के लिए प्रभावी होगी ।

01-04-96 से 31-03-99

नोट : 1. संघ के रूप में वर्गीकृत संगठनों पर उपरोक्त (i) में दी गई शर्त प्रयोज्य नहीं होगी;

2. संगठन को सलाह दी जाती है कि मंजूरी के आगे विस्तार के लिए काफी पहले से निर्धारित प्राधिकारी को, आयकर आयुक्त/आयकर निदेशक (छूट) जिनका संगठन पर क्षेत्राधिकार है, के जरिये तीन प्रतियों में आवेदन करें। मंजूरी के विस्तार के जरिये तीन प्रतियों में आवेदन करें। मंजूरी के विस्तार के आवेदन की तीन (3) प्रतियां, सचिव, वैज्ञानिक तथा औद्योगिक अनुसंधान विभाग को सीधे भेजें।

[सं. 2091/फा.सं. न. नि./एन. डी.-106/कल./35(1)(ii)/
92-आ.क. (छूट)]

पी. सी. विश्वास, अपर आयकर निदेशक (छूट)

Kolkata, the 18th January, 2002

INCOME TAX

S.O. 804.—It is hereby notified for general information that the organisation mentioned below has been approved by the Prescribed Authority under Rule 6 of the Income-tax Rules, for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 under the category 'Association' subject to the following conditions :

- (i) The organisation will maintain separate books of accounts for its research activities;
- (ii) it will furnish the Annual Return of its research activities to the Secretary, Department of Scientific & Industrial Research, "Technology Bhawan", New Mehrauli Road, New Delhi-110016 for every financial year by 31st May of each year; and
- (iii) It will submit to the (a) Director General of Income-Tax (Exemptions), Kolkata (b) Secretary, Department of Scientific & Industrial Research, and (c) Commissioner of Income-tax Director of Income-tax (Exemptions), having jurisdiction over the organisation, by the 31st October of each year, a copy of its audited annual accounts and also a copy of audited Income and Expenditure Account in respect of its research activities for which exemption was granted under sub-section (1) of Section 35 of Income-tax Act, 1961.

NAME OF THE ORGANISATION :

Centre for Materials for Electronics Technology,
Electronics Niketan : 6, C.G.O., Complex,
Lodhi Road,
New Delhi-110003.

This Notification is effective for the following period :

From 1-4-96 to 31-3-99.

NOTE :

1. Condition (i) above will not apply to organisations categorised as Association.
2. The organisation is advised to apply in triplicate and well in advance for further extension of the approval to the Prescribed Authority through the Commissioner of Income-tax Director of Income-tax (Exemptions) having jurisdiction over the

organisation. Three copies of the application for extension of approval should be sent directly to the Secretary, Department of Scientific & Industrial Research.

[No. 2091/F. No. DG/ND-106/CAL/35(1)(ii)92-IT(E)]

P. C. BISWAS, Addl. Director of Income-tax (Exemptions).

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 18 फरवरी, 2002

का.आ. 805.— राष्ट्रीय बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड के 9 के उपखण्ड (1) एवं 2(क) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा 3 के खण्ड(च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्वारा अखिल भारतीय यूको बैंक अधिकारी संघ के महासचिव श्री एस. राय चौधरी को अधिसूचना की तिथि से एवं 30-11-2003 तक की अवधि के लिये अथवा जब तक वे यूको बैंक के अधिकारी रहते हैं, जो भी पहले हो, यूको बैंक के निदेशक मंडल के पद पर नामित करती है। नामांकन बैंक ऑफ महाराष्ट्र अधिकारी संघ द्वारा मुम्बई उच्च न्यायालय में दायर वर्ष 2001 की रिट याचिका सं. 5394 के निर्णय के अध्वीन होगा।

[फा.सं. 9/22/2001-बी.ओ.-I]

रमेश चन्द, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 18th February, 2002

S.O. 805.—In exercise of the powers conferred by clause (f) of sub-section 3 of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (1) and (2)(a) of clause (9) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, after consultation with the Reserve Bank of India hereby nominates Shri S. Roy Choudhury, General Secretary of the All India UCO Bank Officers Federation as a Director on the Board of Directors of UCO Bank for the period from the date of notification and upto 30-11-2003 or until he ceases to be an officer of UCO Bank, whichever is earlier. The nomination will be subject to the decision of the Mumbai High Court in writ petition No. 5394 of 2001 filed by Bank of Maharashtra Officers Association.

[F. No. 9/22/2001-B.O.I.]

RAMESH CHAND, Under Secy.

नई दिल्ली, 20 फरवरी, 2002

क. आ. 806.—केंद्रीय सिविल सेवा (वर्गीकरण, नियंत्रण एवं असोज) नियम, 1965 के नियम 9 के उप-नियम (2), और नियम 12 के उपनियम (2) के खंड (ख) और नियम 24 के उप नियम (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राष्ट्रपति ने इस अधिनियम के द्वारा भारत सरकार, वित्त मंत्रालय (आर्थिक कार्य विभाग) के 28 फरवरी, 1957 के आदेश संख्या क. नि. आ. 627 में नीचे लिखे संशोधन किए हैं; अर्थात्

उपर्युक्त आदेश की अनुसूची के भाग (2) के (1) जो कि बैंक नोट मुद्रणालय, देवास से संबंधित प्रविष्टि के बारे में है निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाती है, अर्थात् :—

1	2	3	4	5
बैंक नोट मुद्रणालय, देवास				
(1) उप तकनीकी अधिकारी, नियंत्रण निरीक्षक, उप कार्य अभियंता, भण्डारी, सहायक भण्डारी, कनिष्ठ कलाकार, सहायक नियंत्रण निरीक्षक, कैंटीन प्रबंधक, कैंटीन पर्यवेक्षक, कैंटीन भण्डारी एवं रु. 3050-4590 से अधिक वेतनमान के अवर्गीकृत औद्योगिक पद	मुख्य प्रशासनिक अधिकारी या वित्तीय सलाहकार एवं मुख्य लेखा अधिकारी	उप महाप्रबंधक	सभी	महाप्रबंधक
(2) रु. 3050-4590 के वेतनमान के सभी अवर्गीकृत पद	मुख्य प्रशासनिक अधिकारी या वित्तीय सलाहकार एवं मुख्य लेखा अधिकारी	कार्य प्रबंधक/ मुख्य रसायनज्ञ / प्रबंधक (नियंत्रण) / मुख्य अभियंता	सभी	उप महाप्रबंधक
(3) रु. 3050-4590 एवं अधिक वेतनमान के वर्गीकृत पद उपरोक्त (1) को छोड़कर	मुख्य प्रशासनिक अधिकारी या वित्तीय सलाहकार एवं मुख्य लेखा अधिकारी	मुख्य प्रशासनिक अधिकारी या वित्तीय सलाहकार एवं मुख्य लेखा अधिकारी	सभी	महाप्रबंधक

(2) भाग 3 जो कि बैंक नोट मुद्रणालय, देवास से संबंधित प्रविष्टि के बारे में है निम्नलिखित प्रविष्टियां प्रतिस्थापित की जाती है; अर्थात्

1	2	3	4	5
रु. 3050-4590 से कम वेतनमान के सभी स्वीकृत पद	प्रशासनिक अधिकारी	प्रशासनिक अधिकारी	सभी	मुख्य प्रशासनिक अधिकारी या वित्तीय सलाहकार एवं मुख्य लेखा अधिकारी
रु. 3050-4590 से कम वेतनमान के सभी अवर्गीकृत औद्योगिक पद	प्रशासनिक अधिकारी	कार्य प्रबंधक/ मुख्य रसायनज्ञ/ मुख्य अभियंता/ प्रबंधक नियंत्रण	सभी	उप महाप्रबंधक

[फा. नं. 4/5/2000-पी. वी. II]

आर. के. साने, अवसर सचिव

फुटनोट : मुख्य आदेश एस. आर. ओ. नं. 627 दिनांक 28-2-1957 द्वारा प्रकाशित एवं तदनुसार निम्नानुसार संशोधन :

क्र.	अधिसूचना क्रमांक	दिनांक	आर ओ/एस ओ नं.	दिनांक
1.	एफ. 10/21/73 बीएनपी	26-03-75	1349 (आरओ)	17-04-76
2.	एफ. 4 (36)/79 बीएनपी	17-04-80	1118 (एसओ)	24-05-80
3.	एफ. 4 (55)/84 बीएनपी	20-04-85	3459 (एसओ)	27-07-85
4.	एफ. 4 (55)/84 बीएनपी	29-10-86	--	14-02-87
5.	एफ. 4 (55)/84 बीएनपी	13-03-87	--	--
6.	एफ. 4 (55)/84 बीएनपी	22-03-88	1204 (एसओ)	16-04-88
7.	एफ. 4 (11)/90 सीवाय. बीएनपी	12-10-90	2830 (एसओ)	10-11-90
8.	एफ. 4 (11)/90 सीवाय. बीएनपी	04-11-91	2943 (एसओ)	30-11-91
9.	एफ. 4/24/95 सीवाय. II बीएनपी	16-08-96	2612 (एसओ)	14-09-96

New Delhi, the 20th February, 2001

S.O. 806 .—In exercise of the powers conferred by sub rule (2) of rule 9, and clause (b) of sub rule (2) of rule 12, and sub rule (1) of rule 24, of the Central Civil Services (Classification Control and Appeal) Rules, 1965, the President hereby makes the following further amendments in the order of the Government of India in the Ministry of Finance (Department of Economic Affairs) No.S.R.O.627 dated 28th February, 1957, namely— :

In the Schedule of the said order, (i) in Part-II, for entries relating to Bank Note Press, Dewas, the following entries shall be substituted, namely :—

SCHEDULE

1	2	3	4	5
Bank Note Press, Dewas				
(i) Deputy Technical Officer, Inspector Control, Deputy Works Engineer, Store Keeper, Assistant Store Keeper, Junior Artist, Assistant Inspector Control, Canteen Manager, Canteen Supervisor, Canteen Store Keeper and unclassified Industrial posts in the grade higher than Rs. 3050-4590.	Chief Administrative Officer Or Financial Adviser and Chief Accounts Officer	Deputy General Manager	All	General Manager
(ii) All unclassified posts in the scale of Rs. 3050-4590.	Chief Administrative Officer Or Financial Adviser and Chief Accounts Officer	Works Manager/Chief Chemist/Manager (Control)/Chief Engineer.	All	Deputy General Manager
(iii) All classified posts in the grade of Rs. 3050-4590 and above other than those at Sr. No.(i) above.	Chief Administrative Officer Or Financial Adviser and Chief Accounts Officer.	Chief Administrative Officer Or Financial Adviser and Chief Accounts Officer.	All	General Manager

(ii) in Part III, for the entries relating to Bank Note Press, Dewas, the following entries shall be substituted, namely :—

1	2	3	4	5
All Classified posts below the grade of Rs. 3050-4590.	Administrative Officer	Administrative Officer	All	Chief Administrative Officer Or Financial Adviser and Chief Accounts Officer.
All Unclassified Industrial Posts below the grade of Rs. 3050-4590.	Administrative Officer	Works Manager/Chief Chemist/Chief Engineer/Manager Control	All	Deputy General Manager

[F. No. 4/5/2000-Cy.II.]

R. K. MAGGO, Under Secy.

Foot Note Principal orders published vide S.R.O.No.627 dated 28-2-57 and subsequent amendments by :—

Sl.	Notification No.	Date	RO/SO No.	Date
1	2	3	4	5
1.	F.10/21/73-BNP	26-03-75	1349(RO)	17-04-76
2.	F.4(36)/79-BNP	17-04-80	1118(SO)	24-05-80
3.	F.4(55)/84-BNP	20-04-85	3459(SO)	27-07-85
4.	F.4(55)/84-BNP	29-10-86	—	14-02-87
5.	F.4(55)/84-BNP	13-03-87	—	—
6.	F.4(55)/84-BNP	22-03-88	1204(SO)	16-04-88
7.	F.4(11)90-Cy.(BNP)	12-10-90	2830(SO)	10-11-90
8.	F.4(11)/90-Cy.(BNP)	04-11-91	2943(SO)	30-11-91
9.	F.4/24/95-Cy.IIBNP	16-08-96	2612(SO)	14-09-96

(बीमा प्रभाग)

नई दिल्ली, 20 फरवरी, 2002

का.आ. 807.—जीवन बीमा निगम अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा निदेश देती है कि भारतीय जीवन बीमा निगम के प्रबंध निदेशक श्री ए. राममूर्ति, प्रबंध निदेशक के रूप में अपने कार्यों के अतिरिक्त 20 फरवरी, 2002 (अपराह्न) से अगले आदेश होने तक श्री जो. एन. बाजपेयी के स्थान पर उस निगम के अध्यक्ष का मौजूदा कार्यभार भी संभालेंगे और वे उस निगम के अध्यक्ष की सभी शक्तियों और कृत्यों का प्रयोग करेंगे।

[फा. सं. 14/2/2002-बीमा-IV]

अजीत शरण, संयुक्त सचिव

(Insurance Division)

New Delhi, the 20th February, 2002

S.O. 807.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby directs that Shri A. Ramamurthy, Managing Director, Life Insurance Corporation of India, will hold current charge of the Chairman of that Corporation vice Shri G. N. Bajpai with effect from 20th February,

2002 (A/N) till further orders, in addition to his duties as Managing Director, and he shall exercise all the powers and the functions of the Chairman of the said Corporation.

[F. No. 14/2/2002-Ins. IV]

AJIT M. SHARAN, Jt. Secy.

(बैंकिंग प्रभाग)

नई दिल्ली, 21 फरवरी, 2002

का.आ. 808.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड 9 के उपखण्ड (1) एवं 2(क) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा 3 के खंड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्वारा अखिल भारतीय बैंक ऑफ बड़ौदा अधिकारी संघ के सचिव (वृहत्त मुम्बई अंचल) श्री नारायण गणेश म्हात्रे को अधिसूचना की तिथि से तीन वर्ष तक की अवधि के लिये अथवा जब तक वे बैंक ऑफ बड़ौदा के अधिकारी रहते हैं, जो भी पहले हो, बैंक ऑफ बड़ौदा के निदेशक मंडल में निदेशक के पद पर नामित करती है। नामांकन बैंक आफ महाराष्ट्र अधिकारी संघ द्वारा मुम्बई

उच्च न्यायालय में दायर वर्ष 2001 की रिट याचिका सं. 5394 के निर्णय के अधीन होगा।

[फा.सं. 9/16/2001 बी.ओ.-I]

रमेश चन्द, अवर सचिव

(Banking Division)

New Delhi, the 21st February, 2002

S.O. 808.—In exercise of the powers conferred by clause (f) of sub-section 3 of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (1) and (2)(a) of clause (9) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, after consultation with the Reserve Bank of India hereby nominates Shri Narayan Ganesh Mhate, Secretary (Greater Mumbai Zone) of the All India Bank of Baroda Officers Association as a Director on the Board of Directors of Bank of Baroda for a period of three years from the date of notification or until he ceases to be an officer of Bank of Baroda, whichever is earlier. The nomination will be subject to the decision of the Mumbai High Court in writ petition No. 5394 of 2001 filed by Bank of Maharashtra Officers Association.

[F. No. 9/16/2001-B.O.I.]

RAMESH CHAND, Under Secy.

नई दिल्ली, 22 फरवरी, 2002

का.आ. 809.—राष्ट्रीय आवास बैंक अधिनियम, 1987 (1987 का 53) की धारा 6 की उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये, केन्द्रीय सरकार भारतीय रिजर्व बैंक से परामर्श करने के बाद, एतद्वारा सेवानिवृत्त आई ए एस (जम्मू एवं कश्मीर : 65) एवं सी-76, गांधीनगर, मुरादाबाद (उत्तर प्रदेश) के निवासी श्री अशोक कुमार को 22 फरवरी, 2002 से तीन वर्ष की अवधि के लिये राष्ट्रीय आवास बैंक के निदेशक बोर्ड में अंशकालिक गैर-सरकारी निदेशक के पद पर नामित करती है।

[फा.सं. 7/15/2000-बी.ओ.-I]

रमेश चन्द, अवर सचिव

New Delhi, the 22nd February, 2002

S.O. 809.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 6 of the National Housing Bank Act, 1987 (53 of 1987), the Central Government, after consultation with Reserve Bank of India, hereby appoints Shri Ashok Kumar, Retd. IAS(J&K;65) and resident of C-76, Gandhinagar, Moradabad (UP) as part-time non-official director on the Board of Directors of the National Housing Bank, for a period of three years with effect from 22nd February, 2002.

[F. No. 7/15/2000-B.O.I.]

RAMESH CHAND, Under Secy.

604 GI/2002—2

नई दिल्ली, 22 फरवरी, 2002

का. आ. 810.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड 3 के उपखण्ड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3)(ज) एवं (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये, केन्द्रीय सरकार, एतद्वारा श्री नयन किशोर मोहन्ती, एडवोकेट, प्लॉट नं. 198, महानन्दी विहार, कटक-753004 (उड़ीसा) को 22 फरवरी, 2002 से तीन वर्ष की अवधि के लिये सेंट्रल बैंक ऑफ इंडिया में अंशकालिक गैर-सरकारी निदेशक के पद पर नामित करती है।

[फा.सं. 9/17/2000-बी. ओ.-I]

रमेश चन्द, अवर सचिव

New Delhi, the 22nd February, 2000

S.O. 810.—In exercise of the powers conferred by sub-section (3) (h) and (3-A) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 read with sub-clause (1) of Clause 3 of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970, the Central Government hereby nominates Shri Nayan Kishore Mohanty, Advocate, plot No. 198, Mahanandi Vihar, Cuttack-753004 (Orissa) as part-time non-official director of Central Bank of India for a period of three years commencing on 22nd February, 2002.

[F. No. 9/17/2000-B.O.I.]

RAMESH CHAND, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 22 फरवरी, 2002

का.आ. 811.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम 1948 (1948 का 41वां) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद् द्वारा भारत का दूतावास डाकार में श्री गुणानन्द गरोला सहायक को 22-02-2002 से सहायक कौंसली अधिकारी का कार्य करने के लिए प्राधिकृत करती है।

[सं. टी-4330/1/2002]

योगेश नारंग, उप सचिव (कोन्सुलर)

MINISTRY OF EXTERNAL AFFAIRS
(C.P.V. Division)

New Delhi, the 22nd February, 2002

S.O. 811.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and consular Officers

(Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Gunanand Gairola, Asst. in the Embassy of India, Dakar to perform the duties of Assistant Consular Officer with effect from 22-02-2002.

[No. T. 4330/1/2002]

Y.C. NARANG, Dy. Secy.(Cons.)

कोयला एवं खान मंत्रालय

(खान विभाग)

नई दिल्ली, 21 फरवरी, 2002

का.आ. 812.—पब्लिक प्रीमिसिस (एक्विशन ऑफ अनआर्थोराइज्ड आक्यूपेन्ट्स) एक्ट, 1971 (1971 का 40) के सेक्शन-3 द्वारा प्रदत्त प्राधिकारों का प्रयोग करते हुए भारत सरकार, खान मंत्रालय की एस.ओ. क्रमांक 2154 दिनांक 21 जुलाई, 1999 द्वारा भारत के राजपत्र, भाग-2, खण्ड-3, उपखण्ड (ii) में प्रकाशित अधिसूचना के प्रतिस्थापन में केन्द्रीय सरकार हिन्दुस्तान जिक लिमिटेड, उदयपुर एक निगमित प्राधिकरण के निम्नांकित अधिकारियों, जिनका उल्लेख निम्न तालिका के कालम (2) में किया गया है, को सरकार के राजपत्रित अधिकारी के स्तर के समकक्ष अधिकारी होने के कारण इस एक्ट के प्रयोजन के लिए एतद्वारा सम्पदा अधिकारियों के रूप में नियुक्त करती है और साथ ही उक्त तालिका के कालम (3) में विनिर्दिष्ट किए गए अनुसार पब्लिक प्रीमिसिस की स्थानीय सीमाओं को परिभाषित करती है, जिसके सम्बन्ध में कवित सम्पदा अधिकारी उक्त एक्ट द्वारा या उसके अन्तर्गत प्रदत्त अधिकारों का प्रयोग करेंगे और सम्पदा अधिकारियों पर लागू कार्यों को निष्पादित करेंगे।

क्र.सं. अधिकारियों का पदनाम		पब्लिक प्रीमिसिस की स्थानीय सीमाएं
1	2	3
1.	महा प्रबन्धक, हिन्दुस्तान जिक लिमिटेड, जावर माइन्स, जिला—उदयपुर, राजस्थान ।	गांव जावर, टीडी और अमरपुरा तहसील गिर्वा तथा गांव बलारिया, सिंगटवाड़ा और नेवा तलाई, तहसील सराड़ा जिला उदयपुर (राजस्थान) में जावर खान समूह जिसमें आवासीय कॉलोनी सम्मिलित है ।
2.	उप-महा प्रबन्धक, हिन्दुस्तान जिक लिमिटेड जिक स्मेल्टर देबारी- डाकघर—देबारी, जिला—उदयपुर (राजस्थान) ।	जिक स्मेल्टर परिसर जिसमें आवासीय कॉलोनी भवन तथा ओपन एरिया एवं भूमि और तहसील गिर्वा में गांव देबारी विछड़ी और तहसील मावली जिला उदयपुर (राजस्थान) में गांव गुडली व जिक स्मेल्टर के अधीन अन्य परिसर ।
3.	उप महा प्रबन्धक, हिन्दुस्तान जिक लिमिटेड राजपुरा दरीबा खान, डाकघर—दरीबा, जिला—राजसमन्द- राजस्थान ।	तहसील रेगमगरा जिला राजसमन्द के गांव दरीबा राजपुरा, आंजना, महेन्दुरिया और तहसील कपासन जिला चित्तोड़गढ़ (राजस्थान) के गांव चकापाडिया में राजपुरा दरीबा खान समूह का सम्पूर्ण खनन पट्टा क्षेत्र (जिसमें अवाप्त भूमि और उस पर निर्मित भवन सम्मिलित है) ।
4.	मुख्य प्रबन्धक (कार्मिक एवं प्रशासन), हिन्दुस्तान जिक लिमिटेड, यशद भवन, उदयपुर (राजस्थान) ।	निगमित कार्यालय भवन, आवासीय बार्टर, अतिथिगृह तथा डिस्पेन्सरी और उदयपुर जिला (राजस्थान) में स्थित कम्पनी के कार्यालय परिसर ।
5.	उप-महा प्रबन्धक, हिन्दुस्तान जिक लिमिटेड, मटून माइन्स, जिला—उदयपुर (राजस्थान) ।	जिला उदयपुर (राजस्थान) में तहसील गिर्वा के ग्राम मटून कानपुर तथा लकड़वास में स्थित सम्पूर्ण खनन पट्टे का क्षेत्र एवं मटून खानें । आवासीय कॉलोनी सहित ।

1	2	3
6.	उप-महा प्रबन्धक, हिन्दुस्तान जिंक लिमिटेड, चन्देरिया लेड-जिंक स्मेल्टर, डाकघर-पुठोली, जिला-चित्तौड़गढ़, राजस्थान ।	गांव पुठोली, तहसील गंगरार जिला चित्तौड़गढ़, (राजस्थान) में स्थित चन्देरिया सीसा-जस्ता प्रद्रावक परिसर जिसमें आवासीय कॉलोनी, भवन तथा ओपन एरिया, चित्तौड़गढ़ तथा घोंसुण्डा डेम साइट डाकघर घोंसुण्डा जिला चित्तौड़गढ़ में चन्देरिया सीसा-जस्ता प्रद्रावक से सम्बन्धित भूमि एवं अन्य परिसर ।
7.	उप-महा प्रबन्धक, हिन्दुस्तान जिंक लिमिटेड, रामपुरा आगूचा खान, डाकघर-आगूचा, जिला-भीलवाड़ा, राजस्थान ।	गांव आगूचा, जिला-भीलवाड़ा (राजस्थान) के पास स्थित रामपुरा आगूचा खान का सम्पूर्ण खनन क्षेत्र साथ ही आवासीय कॉलोनी, भवन और ओपन क्षेत्र, भूमि एवं शाहपुरा वाटर पम्प हाउस और वनास नदी बेंडवेल साइट सहित रामपुरा आगूचा खान, जिला भीलवाड़ा (राजस्थान) के अन्तर्गत अन्य परिसर ।
8.	महा प्रबन्धक, हिन्दुस्तान जिंक लिमिटेड, जिंक स्मेल्टर, विशाखापट्टनम, आन्ध्र प्रदेश ।	सम्पूर्ण जिंक स्मेल्टर परिसर साथ में आवासीय कॉलोनी, ओपन लैंड और गांव भिडी एवं मुलगुडा, जिला विशाखापट्टनम (आन्ध्र प्रदेश) के अन्तर्गत अन्य परिसर ।
9.	खान अधीक्षक-II हिन्दुस्तान जिंक लिमिटेड, अग्निगुण्डाला लेड माइन्स, डाकघर-बन्डालामोट्टू, जिला-गुन्टूर, आन्ध्र प्रदेश ।	बन्डालामोट्टू गांव में स्थित अग्निगुण्डाला का सम्पूर्ण खनन पट्टा क्षेत्र (अवाप्त भूमि) तथा उस पर निर्मित भवन, आवासीय कॉलोनी सहित जिला-गुन्टूर, आन्ध्र प्रदेश ।
10.	उप-महा प्रबन्धक, हिन्दुस्तान जिंक लिमिटेड, लेड स्मेल्टर टुण्डू, डाकघर-टुण्डू, जिला-धनबाद, झारखण्ड ।	गांव टुण्डू, उप-खण्ड भागमारा, पुलिस स्टेशन-भागमारा, जिला धनबाद, झारखण्ड में सम्पूर्ण सीसा प्रद्रावक, विभिन्न भवन, आवासीय कॉलोनी तथा ओपन लैंड एवं अन्य परिसर ।
11.	उप-महा प्रबन्धक, हिन्दुस्तान जिंक लिमिटेड, सर्गीपल्ली माइन्स, डाकघर-सर्गीपल्ली, जिला-सुन्दरगढ़, उड़ीसा ।	सर्गीपल्ली का सम्पूर्ण खनन पट्टा क्षेत्र जिसमें अवाप्त भूमि और उस पर निर्मित भवन सम्मिलित है और गांव किरीसारा, लोकदगा, नेलीपल्ली, महीकानी, बड़ाबंगा भरतपुर और इच्छानाला, डाकघर-सर्गीपल्ली जिला-सुन्दरगढ़, उड़ीसा ।

[फाईल संख्या 18(1)/2001-धातु-II]

ओ.पी. कथूरिया, अवर सचिव

MINISTRY OF COAL AND MINES

(Department of Mines)

New Delhi, the 21st February, 2002

S. O. 812.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), and in supersession of the notification of the Government of India in the Ministry of Mines, published in the Gazette of India, Part-II, Section 3, Sub-section (ii), vide S. O. number 2154 dated the 21st July, 1999, the Central Government hereby appoints the following officers of Hindustan Zinc Limited, Udaipur, a statutory authority, mentioned in Column (2)

of the Table below, as officers equivalent to the rank of gazetted officers of the government to be estate officers for the purpose of the said Act and further defines the local limits of public premises as specified in Column (3) of the said Table, in respect of which, the said estate officers shall exercise the powers conferred, and perform the duties imposed on estate officers by or under the said Act.

TABLE

Sl. No.	Designation of the Officers	Local limits of public premises
(1)	(2)	(3)
1.	General Manager, Hindustan Zinc Limited, Zawar Mines, District—Udaipur, Rajasthan.	Zawar Group of Mines located in Village Zawar, Tidi and Anarpura, Tehsil—Girwa and village Bhalaria, Singatwara and Rawatalia, Tehsil—Sarada, District—Udaipur (Rajasthan), including the residential colony.
2.	Deputy General Manager, Hindustan Zinc Limited, Zinc Smelter Debari, Post Office—Debari, District—Udaipur, Rajasthan.	Zinc Smelter premises including the residential colony buildings and open area and land and other premises under the Zinc Smelter in villages Debari and Bichdi in Tehsil—Girwa and village Gudli in Tehsil—Mavli, District—Udaipur (Rajasthan).
3.	Deputy General Manager, Hindustan Zinc Limited, Rajpura Dariba Mines, Post Office—Dariba, District—Rajsamand, Rajasthan.	Entire Mining lease area of Rajpura Dariba group of mines (including lands acquired and buildings constructed thereon) in village Dariba, Rajpura, Anjana, Mahenduriya, Tehsil—Railmagara, District—Rajsamand and village Chakapriya, Tehsil—Kapasana, District—Chittorgarh (Rajasthan).
4.	Chief Manager (Personnel and Administration), Hindustan Zinc Limited, Yashad Bhawan, Udaipur, Rajasthan.	Corporate Office buildings, residential quarters, guest houses and Dispensary premises of the Company, located in District—Udaipur (Rajasthan).
5.	Deputy General Manager, Hindustan Zinc Limited, Maton Mines, District—Udaipur, Rajasthan.	Entire Mining lease area of Maton Mines located in village Maton, Kanpur and Lakarvas, Tehsil—Girwa, District—Udaipur (Rajasthan), including the residential colony.
6.	Deputy General Manager, Hindustan Zinc Limited, Chanderiya Lead Zinc Smelter, Post Office—Putholi, District—Chittorgarh, Rajasthan.	Chanderiya Lead-Zinc Smelter premises, located in village Putholi, Tehsil—Gangrar, District—Chittorgarh, including residential colony, buildings and open areas, land and other premises pertaining to Chanderiya Lead Zinc Smelter at Chittorgarh and Gosunda Dam site, Post Office—Gosunda, District—Chittorgarh (Rajasthan).
7.	Deputy General Manager, Hindustan Zinc Limited, Rampura Agucha Mines, Post Office—Agucha, District—Bhilwara, Rajasthan.	Entire Mining lease area of Rampura Agucha Mines, located near village Agucha, District—Bhilwara (Rajasthan) including the residential colony, building and open areas, land and other premises under the Rampura Agucha Mines including Banas River Bed well site and Shahpura water pump house in District—Bhilwara, Rajasthan.
8.	General Manager, Hindustan Zinc Limited, Zinc Smelter, Visakhapatnam, Andhra Pradesh.	Complete Zinc Smelter premises including residential colony and open land and other premises in villages Mindi and Mulgunda, District—Visakhapatnam (Andhra Pradesh).

(1)	(2)	(3)
9.	Superintendent, of Mines-II, Hindustan Zinc Limited, Agnigundala Lead Mines, Post Office—Bandalamottu, District—Guntur, Andhra Pradesh	Entire Mining lease area of Agnigundala located in Bandalamottu village (including land acquired and building constructed thereon), District—Guntur, Andhra Pradesh, including the residential colony.
10.	Deputy General Manager, Hindustan Zinc Limited, Lead Smelter Tundoo, Post Office—Tundoo, District—Dhanbad, Jharkhand.	Complete Lead Smelter, its various buildings residential colony and open land and other premises under the Lead Smelter in village Tundoo, Sub-division Bhagmara, Police Station—Bhagmara, District—Dhanbad (Jharkhand).
11.	Deputy General Manager, Hindustan Zinc Limited, Sargipalli Mines, Post Office—Sargipalli, District—Sundergarh, Orissa.	Entire Mining lease area of Sargipalli (including land acquired and building constructed thereon) and village Kirisara, Lokdega, Nailipalli, Mahikani, Badabanga, Bharatpur and Ichanala, Post Office—Sargipalli, District—Sundergarh, Orissa.

[F. No. 18(1)/2001-Met.-II]

O. P. KATHURIA, Under Secy.

परमाणु ऊर्जा विभाग

आदेश

नई दिल्ली, 26 फरवरी, 2002

का.आ. 813.—केन्द्रीय सिविल सेवाएं (दर्शिकरण नियंत्रण एवं अपील नियम 1965 के नियम 9 के उपनियम (2) नियम 12 के उपनियम 2, और नियम 24 के उपनियम 1 के अनुपालन में राष्ट्रपति निर्देश देते हैं कि भारत सरकार के परमाणु ऊर्जा विभाग के दिनांक 3 मई 1993 के एस.ओ. 1044 के आदेश में आगे निम्नलिखित संशोधन किये जायेंगे अर्थात् :—

कथित आदेश की अनुसूची में भाग-II-सामान्य केन्द्रीय सेवाएं वर्ग “ग” शीर्षक के अंतर्गत क्रम संख्या 8 तथा उससे संबंधित प्रविष्टियों को निम्नलिखित क्रम संख्या एवं प्रविष्टियों के रूप में रखा जायेगा अर्थात् :—

1	2	3	4	5	6
8.	नाभिकीय ईंधन सम्मिश्र, मुख्य प्रशासनिक हैदराबाद के पद	अधिकारी नाभिकीय ईंधन सम्मिश्र	मुख्य प्रशासनिक अधिकारी नाभिकीय ईंधन सम्मिश्र	सभी	उप मुख्य कार्यकारी (प्रशासन) नाभिकीय ईंधन सम्मिश्र

[संख्या 1/6/(2)/2001 सतर्कता/18]

वी. डी. मिश्र उप सचिव

टिप्पण : मूल आदेश भारत के राजपत्र में दिनांक 3-05-93 के एस.ओ. संख्या 1044 के अनुसार दिनांक 22-05-93 को प्रकाशित किया गया तथा तदोपरान्त दिनांक 24-11-94 के एस.ओ. संख्या 3519 के अनुसार संशोधित करके दिनांक 24-12-94 को भारत के राजपत्र में प्रकाशित किया गया और अंत में जिसे दिनांक 16-04-1997 के एस.ओ. 1131 द्वारा दिनांक 03-05-1997 को संशोधित कर प्रकाशित किया गया।

DEPARTMENT OF ATOMIC ENERGY

ORDER

New Delhi, the 26th February, 2002

S. O. 813.—In pursuance of sub-rule (2) of rule 9, clause (b) of sub-rule (2) of rule 12 and sub-rule (1) of rule 24 of the Central Civil Services (Classification, Control and Appeal) Rules 1965, the President hereby directs that the following further amendments shall be made to the Order of the Government of India in the Department of Atomic Energy, number S.O. 1044 dated the 3rd May, 1993, namely :—

In the Schedule to the said Order, under the heading “Part-II-General Central Services, Group ‘C’”, for serial no. 8 and the entries relating thereto, the following serial no. and entries shall be substituted, namely :—

1	2	3	4	5	6
“8.	Posts in the Nuclear Fuel Complex, Hyderabad.	Chief Administrative Officer, Nuclear Fuel Complex	Chief Administrative Officer, Nuclear Fuel Complex.	All	Deputy Chief Executive (Administration) Nuclear Fuel Complex.”

[No. 1/6(2)/2001-Vig./18.]

B. D. MISHRA, Dy. Secy

Footnote : The Principal Order was published vide number S.O. 1044 dated 3-5-93 in the Gazette of India dated 22-5-93 and amended vide number S.O. 3519 dated 24-11-94 and published in the Gazette of India dated 24-12-94 and lastely amended vide Number S.O. 1131 dated 16-04-1997 in the Gazette of India dated 03-05-1997.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 19 फरवरी, 2002

का.आ. 814.—भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (ख) के अनुसरण में डा. भावीन एस. कोठारी, राजकोट को सौराष्ट्र विश्वविद्यालय, राजकोट की सीनेट द्वारा 4 नवम्बर, 2001 से भारतीय आयुर्विज्ञान परिषद का सदस्य निर्वाचित किया गया है।

अतः, अब केन्द्र सरकार, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबन्ध के अनुसरण में, तत्कालीन स्वास्थ्य मंत्रालय, भारत सरकार का दिनांक 9 जनवरी, 1960 की अधिसूचना का.आ. संख्या 138 में एतद्वारा निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में “धारा 3 की उपधारा (1) के खण्ड (ख) के अन्तर्गत निर्वाचित” शीर्षक के अन्तर्गत क्रम संख्या 37 तथा उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या तथा प्रविष्टि प्रतिस्थापित की जाएगी, अर्थात् :

“37. डा. भावीन एस. कोठारी, सौराष्ट्र विश्वविद्यालय”
कोठारी सर्जिकल हास्पिटल,
मिलपारा मन रोड़, 9-लक्ष्मी-
बाड़ी कानेर,
राजकोट-360002.

[सं.वी.-11013/2/2001-एम.ई. (नीति-I)]

पो.सी. कलावरण, अवर सचिव

पादटिप्पण :—मुख्य अधिसूचना दिनांक 9-1-1960 के का.आ. 138 के तहत भारत के राजपत्र में प्रकाशित हुई थी।

MINISTRY OF HEALTH & FAMILY WELFARE

(Department of Health)

New Delhi, the 19th February, 2002

S. O. 814.—Whereas in pursuance of clause (b) of Sub-section (1) of Section 3 of the Indian Medical Council Act, 1956(102 of 1956) Dr. Bhavin S. Kothari, Rajkot has been elected by the Senate of Saurashtra University, Rajkot to be member of the Medical Council of India with effect from 4th November, 2001.

Now, therefore, in pursuance of the provision of Sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138, dated the 9th January, 1960, namely :—

In the said Notification, under the heading, ‘Elected under clause (b) of Sub-section (1) of Section 3, for serial number 37 and the entries relating

thereto the following serial number and entry shall be substituted, namely:—

“37. Dr. Bhavin S. Kothari, Saurashtra
Kothari Surgical Hospital, University”
Mill Para Main Road,
9-Laxmiwadi Corner,
Rajkot-360002

[No. V-11013/2/2001-ME (Policy-I)]

P. G. KALADHARAN, Under Secy.

Footnote : The Principal notification was published in the Gazette of India, vide S.O. 138 dated 9-1-1960.

नई दिल्ली, 19 फरवरी, 2002

का.आ. 815.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में स्वास्थ्य और परिवार कल्याण मंत्रालय के अन्तर्गत आने वाले निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी है का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती :-

1. हिन्दुस्तान लैटेक्स लिमिटेड, निरोध फैक्टरी, पेरोरकडा तिरुवनन्तपुरम-695005.

2. भारतीय आयुर्विज्ञान परिषद्, एवान-ए-गालिब मार्ग, कोटला रोड, नई दिल्ली-110002.

3. केन्द्रीय औषध परीक्षण प्रयोगशाला, चौथा माला, कामगार अस्पताल भवन, रोड-33, वागले एस्टेट, थाने (मुम्बई)-400604।

4. क्षेत्रीय स्वास्थ्य और परिवार कल्याण मंत्रालय “संगरीला” यूरोपीक रोड, इम्फाल।

5. स्नातकोत्तर चिकित्सा शिक्षा एवं अनुसंधान संस्थान, चंडीगढ़।

[संख्या ई.-11012/1/94-रा.भा.कार्या. (हिन्दी-I)]

जवाहर ठाकुर, मुख्य लेखा नियंत्रक

New Delhi, the 19th February, 2002

S. O. 815.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use of Official purposes of Union) Rules, 1976, the Central Government

hereby notifies the following offices under the Ministry of Health & Family Welfare, 80 per cent staff whereof have acquired working knowledge of Hindi:—

1. Hindustan Latex Limited, Nirodh Factory, Perorkada, Thiruvananthapuram—695 005,
2. Medical Council of India, Aiwan-E-Galib Marg, Kotla Road, New Delhi—110 002.
3. Central Drugs Testing Laboratory, 4th Floor, ESIS Hospital Building, Road 33, Wagle Estate, Thane (Mumbai) 400 604.
4. Regional Health & Family Welfare Office “Sangreela” Urcpck Road, Imphal.
5. Post Graduate Institute of Medical Education and Research, Chandigarh.

[No. E.11012/1/94-OLI (Hindi-I)]

JAWAHAR THAKUR, Chief Controller of Accounts

नागर विमानन मंत्रालय

नई दिल्ली, 21 फरवरी, 2002

का.आ. 816.—नागर विमानन मंत्रालय में संयुक्त सचिव श्री अनुराग गोयल को पवन हंस हेलीकॉप्टर्स लिमिटेड के अध्यक्ष व प्रबंध निदेशक का अतिरिक्त भार सौंपने के लिए पवन हंस हेलीकॉप्टर्स लिमिटेड (पीएचएचएल) के संयम ज्ञापन अनुच्छेद के अनुच्छेद 40 में निहित शक्तियों का प्रयोग करते हुए, दिनांक 17-12-2001 से तीन महीने की अवधि के लिए अथवा नए पदधारी की नियुक्ति होने तक, जो भी पहले हो, राष्ट्रपति का कार्योत्तर अनुमोदन प्रदान किया जाता है।

[संख्या ए.वी.-13015/032/2001-वी.ई.]

पी.एस. राधाकृष्ण, उप सचिव

MINISTRY OF CIVIL AVIATION

New Delhi, the 21st February, 2002

S. O. 816.—In exercise of the powers conferred by Article 40 of the Memorandum and Articles of Association of Pawan Hans Helicopters Limited (PHHL), ex-post-facto approval of the President is accorded for entrusting the additional charge of Chairman-cum-Managing Director, PHHL to Shri Anurag Goel, Joint Secretary in the Ministry of Civil Aviation for a period of three months with effect from 17-12-2001 or till the appointment of new incumbent, whichever event occurs earlier.

[No. AV.P 13015/032/2001-VE]
P. S. RADHA KRISHNA, Dy. Secy.

(10) कैप्टन सुभाष कुमार,
डिप्टी कन्जर्वेटर,
न्यू मैंगलोर पोर्ट ट्रस्ट,
मैंगलोर।

[सं. एलएच-11016/3/2000-एसएल]

मुंशी राम, अवर सचिव

MINISTRY OF SHIPPING

(Shipping wing)

New Delhi, the 26th February, 2002

S.O. 817.—In pursuance of Sub-Section (1) of Section 4 of the Lighthouse Act, 1927 (No. 17 of 1927) read with Rule 4 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976, the Central Government hereby makes the following amendments in the Government of India, Ministry of Shipping (Shipping Wing's) Notification No. LH-11016/3/2000-SL dated 22nd March, 2001.

In the said notification dated 22nd March, 2001, for the existing entry at S.No. 10, the following entry shall be substituted, namely :

(10) Capt. Subhas Kumar,	Representative of
Dy. Conservator,	Indian Ports
New Mangalore Port Trust	Association.
Mangalore.	

का. आ. 817.—दीपवरो के लिये केन्द्रीय सातहकार समिति (प्रतिक्रियात्मक) नियमावली, 1976 के निधन 4 के साथ पठित दीपवर अधिनियम, 1927 (1927 का 17) की धारा 4 की उपधारा (1) के अनुसरण में केन्द्र सरकार एतद्वारा भारत सरकार, पोत परिवहन मंत्रालय (नौवहन पक्ष) की अधिसूचना सं. एलएच-11016/3/2000-एसएल दिनांक 22 मार्च, 2001 में निम्नलिखित संशोधन करती है :

22 मार्च, 2001 की उक्त अधिसूचना में क्रम सं. 10 के स्थान पर निम्नलिखित प्रविष्टियां प्रतिस्थापित की जायेंगी, अर्थात् :

[F. No. LH-11016/3/2000-SL]
MUNSHI RAM, Under Secy.

सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय

नई दिल्ली, 28 फरवरी, 2002

का.क्रा. 818:—भारतीय सांख्यिकीय संस्थान अधिनियम (सं. 57) 1959 की धारा 8 की उप-धारा (1) में प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 2002-2007 के लिए निम्नलिखित व्यक्तियों को शामिल करते हुए एक समिति का गठन करती है:—

(i) प्रो. डा. बी.के. काले
सांख्यिकी के प्रोफसर (सेवानिवृत्त)
सांख्यिकी विभाग,
पुण विश्वविद्यालय

अध्यक्ष

(ii) प्रो. डॉ. जे. नंदा,
प्रोफसर, एमेरिटस,
विद्युत अभियंत्रिकी विभाग,
भारतीय प्रौद्योगिकी संस्थान, दिल्ली,

सदस्य

(iii) प्रो. अमिताभ बोस,
निदेशक,
भारतीय प्रबन्धन संस्थान,
कोलकाता।

सदस्य

(iv) प्रो. के.बी. सिन्हा,
निदेशक,
भारतीय सांख्यिकीय संस्थान,
कोलकाता।

सदस्य

(v) महानिदेशक,
केन्द्रीय सांख्यिकी संगठन,
सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय
नई दिल्ली।

5

(vi) अपर सचिव तथा वित्तीय सलाहकार, सदस्य
सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय
नई दिल्ली।

(vii) निदेशक (वित्त) सदस्य सचिव
सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय
नई दिल्ली

और उक्त समिति को निम्न लिखित कार्य निर्धारित करती है:—

1. कार्य/स्कीमों/परियोजनाओं (योजनागत तथा गैर-योजनागत दोनों) के समस्त कार्यक्रम की समीक्षा करना तथा संशोधित अनुमान एवं बजट अनुमान में दी जाने वाली राशि के संबंध में सिफारिशें करना और भारतीय सांख्यिकीय संस्थान को सहायता अनुदान अदा करने के लिए वित्तीय अनुमानों के सन्दर्भ में भी सिफारिशें करना।
2. (क) वित्त वर्ष के दौरान भारतीय सांख्यिकीय संस्थान कोलकाता द्वारा शुरू किए जाने वाले सम्मत कार्य (योजनागत तथा गैर-योजनागत दोनों) के कार्यक्रमों को दर्शाने वाले विवरण के साथ-साथ ऐसे कार्य के सामान्य वित्तीय अनुमानों को तैयार और प्रस्तुत करना जिसके लिये केन्द्र सरकार निधियां उपलब्ध करवाए।

(ख) कार्यक्रम से संबंधित विस्तृत रूप-रेखा निर्धारित करना।

3. समिति 31 मार्च को या इससे पूर्व अपनी रिपोर्ट सरकार को प्रस्तुत करेगी।

4. सांख्यिकी और कार्यक्रम कार्यान्वयन मंत्रालय समिति को सचिवालय सहायता प्रदान करेगा जिसका मुख्यालय नई दिल्ली में होगा।

[सं. 12011/7/96-समन्वय/बी.एण्ड एफ.]

के.के. राय, अवर सचिव

MINISTRY OF STATISTICS AND
PROGRAMME IMPLEMENTATION

New Delhi, the 28th February, 2002

S.O. 818.—In exercise of the powers conferred by Sub-section (1) of Section 8 of the Indian Statistical Institute Act (No. 57) of 1959, the Central Government hereby constitutes a Committee for 2002—2007 consisting of ;—

(i) Prof. Dr. B. K. Kale. Chairman

Professor of Statistics
(Retd.),
Department of Statistics,
University of Pune.

(ii) Prof. Dr. J. Nanda, Member

Professor, Emeritus,
Department of Electrical
Engineering,
IIT, Delhi.

(iii) Prof. Amitabh Bose, Member

Director,
Indian Institute of
Management,
Kolkata.

(iv) Prof. K. B. Sinha, Member

Director,
Indian Statistical Institute,
Kolkata.

(v) Director General, Member

Central Statistical
Organisation,
Ministry of Statistics &
P.I.,
New Delhi.

(vi) Additional Secretary and Member
Financial Adviser,
Ministry of Statistics &
P.I.,
New Delhi.

(vii) Director (Finance), Member Secretary
Ministry of Statistics &
P.I.,
New Delhi.

And assign the following duties to the said Committee, namely ;—

(1) Review of the agreed programme of work/schemes/projects (both Plan and Non-Plan) and make recommendations regarding the amount to be provided in the RE & BE and also make recommendations regarding the financial estimates for paying grant-in aid to the ISI.

(2) (a) Preparation and submission to the Central Government of statement showing programmes of work (both Plan & Non-Plan) agreed to be undertaken by the Indian Statistical Institute, Kolkata, during financial year for which the Central Government may provide funds, as well as general financial estimates of such work.

(b) The settlement of broad lines of the programme of work.

(3) The Committee shall submit its Report to the Government on or before 31st March.

(4) The Ministry of Statistics & Programme Implementation shall render secretarial assistance to the Committee, the headquarters of which will be at New Delhi.

[No. 12011/7/96—Coord/B&F]

K. K. Roy. Under Secy

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 4 मार्च, 2002

का. आ. 819.— केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना स का आ 1705 तारीख 16 जुलाई, 2001 भारत के राजपत्र, भाग - II, खण्ड-3, उपखण्ड (ii) तारीख 21 जुलाई, 2001 में पृष्ठ 3491-3506 पर प्रकाशित अधिसूचना का निम्नलिखित सशोधन करती है अर्थात्

उक्त अधिसूचना में निम्नलिखित शीर्षक के अधीन,

(अ) ग्राम जगाणा - पृष्ठ 3494 पर,

- 1 सर्वे सख्या न 229+230/1 के सामने क्षेत्रफल "0-08-61" के स्थान पर "0-10-37"
- 2 सर्वे सख्या न 229+230/3 के सामने क्षेत्रफल "0-06-07" के स्थान पर "0-11-83"
- 3 सर्वे सख्या न 229+230/4 के सामने क्षेत्रफल "0-04-54" के स्थान पर "0-09-68"

(आ) ग्राम इसबीपुरा - पृष्ठ 3494 पर,

- 1 सर्वे सख्या न 6/1 के सामने क्षेत्रफल "0-09-70" के स्थान पर "0-18-11"
- 2 सर्वे सख्या न 6/3 के सामने क्षेत्रफल "0-08-60" के स्थान पर "0-14-12"
- 3 सर्वे सख्या न 6/5 के सामने क्षेत्रफल "0-07-84" के स्थान पर "0-10-71"
- 4 सर्वे सख्या न 4+5 के सामने क्षेत्रफल "0-25-89" के स्थान पर "0-28-05"

(इ) ग्राम पानलपुर- पृष्ठ 3496 पर,

- 1 सर्वे सख्या न 361/1 के सामने क्षेत्रफल "0-13-83" के स्थान पर "0-24-70"
- 2 सर्वे सख्या न 359 के सामने क्षेत्रफल "0-16-34" के स्थान पर "0-18-18"
- 3 सर्वे सख्या न 344 के सामने क्षेत्रफल "0-21-45" के स्थान पर "0-31-16"

(ई) ग्राम चाडगाढा कोटाडा - पृष्ठ 3498 पर,

- 2 सर्वे सख्या न 48 के सामने क्षेत्रफल "0-18-18" के स्थान पर "0-27-42"
- 3 सर्वे सख्या न 39 के सामने क्षेत्रफल "0-09-56" के स्थान पर "2-43-42"

[फा. सं. आर-25011/20/2001—ओआर-I]

एस. एस. केमवाल, अवर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 4th March, 2002

S. O. 819.—In exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby amends the Notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O.1705 dated 16th July, 2001 published in the Gazette of India, Part-II, Section 3, sub-section (ii) at pages 3491 to 3506 on 21st July, 2001 in the following manner namely:-

In the said notification, under heading:

(A) Village JAGANA at Page 3502, -

1. Against Survey No.229+230/1, for the area “0-08-61” substitute “0-10-37”
2. Against Survey No.229+230/3, for the area “0-06-07” substitute “0-11-83”
3. Against Survey No.229+230/4, for the area “0-04-54” substitute “0-09-68”

(B) Village ESBIPURA at Page 3502, -

1. Against Survey No.6/1, for the area “0-09-70” substitute “0-18-11”
2. Against Survey No.6/3, for the area “0-08-60” substitute “0-14-12”
3. Against Survey No.6/5, for the area “0-07-84” substitute “0-10-71”
4. Against Survey No.4+5, for the area “0-25-89” substitute “0-28-05”

(C) Village PALANPUR at Page 3504, -

1. Against Survey No.361/1, for the area “0-13-83” substitute “0-24-70”
2. Against Survey No.359, for the area “0-16-34” substitute “0-18-18”
3. Against Survey No.344, for the area “0-21-45” substitute “0-31-16”

(D) Village CHANDGADH KOTADA at Page 3506 -

1. Against Survey No.48, for the area “0-18-18” substitute “0-27-42”
2. Against Survey No.39, for the area “0-09-56” substitute “2-43-42”

[No. R-25011/20/2001—OR-I]
S. S. KEMWAL, Under Secy.

नई दिल्ली, 4 मार्च, 2002

का. आ. 820.—केन्द्रीय सरकार को लोक हित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में विरमगाम से हरियाणा राज्य में पानीपत तक, राजस्थान राज्य में चाकसू से होती हुई पेट्रोलियम (अपरिष्कृत) के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा सलाया-मथुरा पाइपलाइन प्रणाली के विरमगाम-चाकसू, चाकसू-पानीपत व चाकसू-मथुरा सेक्शनों के संवर्द्धन के कार्यान्वयन हेतु एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइनें बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि में उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है उस तारीख से जिसको, भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर उसमें उपयोग के अधिकार का अर्जन करने या भूमि के नीचे पाइपलाइन बिछाने के संबंध में श्री आर.एम. पंड्या, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, (पाइपलाइन प्रभाग) पो.बा.सं.4, डाकघर विरमगाम, जिला अहमदाबाद, गुजरात-382150 को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तालूका : पालनपुर		जिला : बनासकांटा		राज्य : गुजरात	
				क्षेत्रफल	
गाँव का नाम	सर्वे सं.	उप-खण्ड सं.	हेक्टर	एयर	वर्ग मीटर
1	2	3	4	5	6
पालनपुर	654	2 क	0	04	19
	654	2 ख	0	04	19
	745		0	36	44

New Delhi, the 4th March, 2002

S. O. 820.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of petroleum (crude) from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan, a pipeline should be laid by the Indian Oil Corporation Limited for implementing the "Augmentation of Viramgam-Chaksu, Chaksu-Panipat and Chaksu-Mathura sections of Salaya-Mathura pipeline System";

And, whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of this notification as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to the Competent Authority, Shri R.M.Pandya, Indian Oil Corporation Limited, (Pipelines Division), P.B.No.4, P.O. Viramgam, Distt. Ahmedabad, Gujarat-382150.

SCHEDULE

Taluka: PALANPUR		District: BANASKANTHA		State: GUJARAT	
Name of the Village	Survey no.	Sub-Division no.	Area		
			Hectare	Are	sq.mtr.
1	2	3	4	5	6
PALANPUR	654	2A	0	04	19
	654	2B	0	04	19
	745		0	36	44

[No. R-25011/20/2001—OR-I]
S. S. KEMWAL, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 8 फरवरी, 2002

का. आ. 821.—औद्योगिक विवाद अधिनियम, 1947 (1947 का. 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार जयपुर सिलिका सप्लाइ कं. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 42/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-2-2002 को प्राप्त हुआ था।

[सं. एल-29012/74/97-आईआर. (एम)]

बो. एम. डेविड, अवसर सचिव

MINISTRY OF LABOUR

New Delhi, the 8th February, 2002

S.O. 821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/97) of the Central Government Industrial Tribunal, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Jaipur Silica Supply Co. and their workman, which was received by the Central Government on 7-2-2002.

[No. L-29012/74/97-IR(M)]

B. M. DAVID, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर।

आदेश संख्या : एल 29012/74/97/आईआर/एम/
24-10-97

प्रकरण संख्या : सी.आई.टी./बी-42/97

नारायण राम पुत्र श्री स्व. जगन्नाथ राम द्वारा श्री ऋषभचंद जैन
80, बजरंगबिहार, गोपालपुरा रेलवे फाटक के पास, जयपुर।

—प्रार्थी

बनाम

प्रबंधक,

जयपुर सिलिका सप्लाइ कम्पनी,
151, जोहरी बाजार, जयपुर।

—अप्रार्थी

उपस्थित :

प्रार्थी की ओर से

अप्रार्थी की ओर से

पंचाट दिनांक

2/1/2002

पंचाट

केन्द्रीय सरकार के द्वारा उक्त आदेश के जरिए निम्न
विवाद औद्योगिक विवाद अधिनियम 1947 (जिसे बाद में
अधिनियम कहा गया है) की धारा 10 की उपधारा 1 के

खंड -ब के प्रावधानों के अन्तर्गत न्यायान्वित हेतु निर्देशित
किया गया :

“Whether the workmen Shri Narayan Ram S/o
Shri Jagannath Ram. Driver is entitled for
employment after 5-7-96 with the manage-
ment of M/s. Jaipur Silica Supply Co.,
Jaipur? If not, to what relief the work-
man is entitled to and what date”.

प्रार्थी के द्वारा स्टेटमेंट आफ फेस प्रस्तुत किया गया,
जिसमें उल्लेख किया गया कि उसकी नियुक्ति विपक्षी संस्थान
के अर्धवर्ष 1984 में ड्राइवर के पद पर हुई थी। यह
नियुक्ति के पश्चात् निरन्तर विपक्षी संस्थान में कार्य करता
रहा। दिनांक 24-4-86 की दुर्यवस्था को लेकर उसके विरुद्ध
एक मुकदमा चला, जिसमें दिनांक 12-6-96 को जेल भेज
दिया। वह दिनांक 12-6-96 से 5-7-96 तक जेल में रहा।
राजस्थान उच्च न्यायालय के दिनांक 5-7-96 के निर्णय द्वारा
उसे दिनांक 5-6-96 को रिहा कर दिया गया तथा उसे
इयूटी पर नहीं लिया। वह इस तरह से दिनांक 6-7-96 से
सेवामुक्त कर दिया गया। उसे बोनस का भुगतान एवं उसके
वेतन से पी. एफ की कटौती 1990 में बंद कर दी गई।
जिसके लिए वह विवाद उठाने का अधिकार सुरक्षित रखा है।
उसे सेवामुक्त किए जाने से पूर्व न तो उसे कोई नोटिस दिया
गया न नोटिस वेतन व न छटनी का सुझाव। सेवा-
मुक्त किए जाने समय विपक्षी संस्थान में उसने किंगडम अनेकों
श्रमिक कार्यरत थे। उसे सेवामुक्त किए जाने के पश्चात्
नए श्रमिकों को भी भर्ती किया गया। अपाथी के द्वारा
उसकी सेवामुक्ति अधिनियम की धारा 25-एफ, जी, एच, एन एवं
औद्योगिक विवाद अधिनियम, 1958 के नियम 77, 78
का उल्लंघन कर की गई। प्रार्थना की गई कि यह धोषित
किया जाए कि विपक्षी द्वारा दिनांक 6-7-96 को की गई सेवा-
मुक्ति अनुचित एवं अवैध है व उसे पुनः सेवा में लिए जाने
व उसकी सेवा निरन्तर मानी जाने व सेवा में निरन्तर
माने जाने के कारण मिलने वाले समस्त आर्थिक लाभ एवं अन्य
लाभ दिलाए जाए।

अप्रार्थी की ओर से जवाब में प्रारंभिक आपत्ति की गई
कि प्रार्थी खदान में कार्यरत श्रमिक नहीं था। वह दुकान पर
चौकीदार था। उसकी वृद्धावस्था को देखते हुए 700- रुपये
मासिक अनुग्रह राशि का भुगतान भी दुकान द्वारा किया जाता
रहा। यह सारे तथ्य समझौता अधिकारी के समक्ष स्पष्ट
कर दिए गए थे। इसके उपरान्त भी प्रार्थी को खदान में कार्य-
रत श्रमिक मानकर केन्द्रीय सरकार के द्वारा विवाद इस
अधिकरण को प्रेषित किया जाना अवैधानिक है। दुकान पर
कार्य करने वाले श्रमिकों का विवाद प्रेषित करने का केवल
राज्य सरकार को क्षेत्राधिकार है न कि केन्द्र सरकार को।
दिनांक 5-7-96 को सेवा पृथक् करने का कोई विवाद विद्यमान
नहीं था। प्रार्थी ने खदान की नौकरी दिनांक 1-4-90 से
हो छोड़ दी थी। उसने अपने पी. एफ. के पैसे व अन्य वकाया
का चुकती हिसाब कर दिया था। प्रार्थी की वर्तमान आयु 75
वर्ष के लगभग है। वह शारीरिक रूप से खदान पर चालक
के पद पर कार्य करने में असमर्थ है। केन्द्रीय सरकार के

द्वारा बनाए गए आदर्श स्थाई आदेशों में भी सेवानिवृत्ति की आयु 58 वर्ष है। शारीरिक अक्षमता के कारण प्रार्थी कोई राहत पाने का अधिकारी नहीं है। क्लेम के खदानुसार जवाब में उल्लेख किया गया कि प्रार्थी पूर्व में भारतीय सेना में कार्यरत था जहां से सेवानिवृत्त होने के बाद उसने राजस्थान राज्य पथ परिवहन निगम में नौकरी की जहां से भी वह वर्ष 1984 में सेवानिवृत्त हो गया। इसके पश्चात् इस शर्त पर विपक्षी संस्थान में चालक के पद पर रख लिया था कि वह चिकित्सा परीक्षण में चालक के पद के योग्य पाया गया तो उसे नौकरी पर रख लिया जाएगा। उसे बार-बार मैडिकल चैक-अप कराने हेतु कहा गया परन्तु उसने मैडिकल चैक-अप नहीं करवाया, क्योंकि वह जानता था कि उसकी आंखों की रोशनी कम है। आंखों की रोशनी कम होने के कारण वर्ष 1986 में उसने विपक्षी संस्थान की जीप से दुर्घटना कर दी थी। प्रार्थी ने खदान की सेवा दिनांक 1-4-90 को ही त्याग दी थी, अतः दिनांक 6-7-96 को उसे सेवा से पृथक् करने का प्रश्न ही उत्पन्न नहीं होता। चूंकि प्रार्थी खदान का कर्मचारी ही नहीं रहा इस कारण बोनस व पी. एफ. अनुग्रह की राशि का काटना स्वतः बंद हो गया। विपक्षी संस्थान में श्रमिकों की संख्या 100 से कम है, अतः अधिनियम की धारा 25-एन का उल्लंघन करने का प्रश्न उत्पन्न नहीं होता।

प्रार्थी के द्वारा जवाब का प्रत्युत्तर प्रस्तुत किया गया। जिसमें अप्रार्थी के इस कथन का असत्य होने का उल्लेख किया गया कि वह अप्रार्थी की दुकान पर चौकीदारी करता था व उसे अनुग्रह के रूप में 700- रुपये प्रतिमाह राशि दी जाती थी। विपक्षी संस्थान में कोई स्थाई आदेश बने हुए नहीं है। अप्रार्थी ने यह उल्लेख नहीं किया है कि उसके संस्थान में श्रमिकों की संख्या क्या है जिसके आधार पर स्थाई आदेश लागू होते हैं। आंखों की रोशनी कम होने के कारण जीप से दुर्घटना होने के कथन को भी गलत बताया।

पक्षकारों के अभिकथनों के आधार पर निम्नांकित विवाद विन्दु बनाए गए :—

(1) आया जवाब की प्रारम्भिक आवृत्ति संख्या -1 के अनुसार प्रार्थी द्वारा उठाया गया विवाद चलने योग्य नहीं है?

(2) आया प्रार्थी ने खदान की नौकरी दिनांक 1-4-90 से छोड़ दी थी, यदि हां तो इसका प्रभाव?

(3) आया प्रार्थी शारीरिक रूप से खदान पर अथवा चालक के पद पर कार्य करने में असमर्थ है, यदि हां तो इसका प्रभाव?

(4) आया विपक्षी संस्थान के द्वारा प्रार्थी की सेवा समाप्ति औद्योगिक विवाद अधिनियम, 1947 की धारा 25-एफ, जी, एच, एन व औद्योगिक विवाद (केन्द्रीय) नियम, 1957 के नियम 77, 78 का उल्लंघन कर की गई है?

(5) प्रार्थी क्या अनुतोष पाने का अधिकारी है?

प्रार्थी की ओर से क्लेम के समर्थन में स्वयं का शपथ-पत्र प्रस्तुत किया गया जिस पर प्रतिपरीक्षा करने का अवसर

अप्रार्थी को दिया गया। प्रलेखीय साध्य में नियमित वेतन भुगतान करने के बारे में प्रतिनिधि प्रार्थना पत्र प्रदर्श डब्ल्यू-1 दिनांक 7-6-95 प्रतिलिपि चैक दिनांक 30/6/95 प्रदर्श डब्ल्यू 2 एवं प्रतिनिधि असफल दाता प्रतिवेदन प्रदर्श डब्ल्यू 3 प्रस्तुत किए गए। विपक्षी की ओर से हरिमोहन खंडेलवाल का शपथ पत्र प्रस्तुत किया गया जिस पर प्रतिपरीक्षा करने का अवसर प्रार्थी को दिया गया। प्रलेखीय साध्य में अप्रार्थी की ओर से रोकड़ बही की प्रतिनिधियां प्रदर्श एम 1 से एम 37 प्रति लिपि स्टाफ उपस्थिति रजिस्टर प्रदर्श एम 38 से एम 73, प्रतिनिधि नोटिस प्रदर्श एम 1 ए, प्रतिनिधि रजिस्टर बोनस अप्रैल 90 से मार्च, 90 प्रदर्श एम 2 ए, प्रतिनिधि परिपत्र 5 एवं 10 कर्मचारी भविष्य निधि प्रदर्श एम 3-ए, प्रतिनिधि रजिस्टर मजदूरी अप्रैल, 90 से मार्च, 91 प्रतिनिधि रजिस्टर बोनस अप्रैल, 90 से मार्च, 91 एवं प्रतिनिधि रजिस्टर उपस्थिति अप्रैल, 90 से मार्च, 91 प्रस्तुत किए गए।

पक्षकारों की ओर से लिखित में बहुम पेश की गई।

बनाए गए विवाद बिन्दुओं का विनिश्चय निम्न प्रकार किया जाना है :—

विन्दु संख्या :—1 व 2 अप्रार्थी के द्वारा जवाब में प्रारम्भिक आवृत्तियां उठाई गई कि प्रार्थी अप्रार्थी संस्थान की खदान में कार्यरत श्रमिक न होकर अप्रार्थी को दुकान पर चौकीदार था व इस कारण केन्द्र सरकार को विवाद निर्देशित करने का क्षेत्राधिकार नहीं है। अप्रार्थी ने जवाब में यह भी उल्लेख किया है कि प्रार्थी ने खदान की नौकरी दिनांक 1-4-90 से छोड़ दी थी व तत्पश्चात् खदान का कर्मचारी नहीं रहा। इस प्रकार इस बारे में कोई विवाद नहीं है कि प्रार्थी अप्रार्थी संस्थान में दिनांक 31-3-90 तक अप्रार्थी संस्थान की खदान पर कार्यरत था। अप्रार्थी की ओर से खदान कर्मचारियों का उपस्थिति रजिस्टर प्रदर्श एम-35 से एम-40 प्रस्तुत किया गया है जिसमें प्रार्थी का विपक्षी संस्थान में चालक के पद पर उपस्थित होने का उल्लेख किया गया। अप्रार्थी की ओर से तर्क दिया गया है कि अप्रार्थी संस्थान के रजिस्टर में अप्रैल, 90 से आगे प्रार्थी की उपस्थिति दर्ज नहीं है। इस संदर्भ में विपक्षी संस्थान की ओर से उपस्थिति रजिस्टर की प्रतिलिपि प्रदर्श एम-41 से एम-73 की ओर ध्यान आकर्षित किया गया। यह भी तर्क दिया गया है कि मास्टररोल एम-41 से एम-46 सहायक श्रम आयुक्त के द्वारा दिनांक 22-5-90 को देखी गई। यह भी तर्क दिया गया है कि प्रार्थी ने दिनांक 1-4-90 के बाद अनुविज्ञा के कारण ही आंखों की रोशनी कम होने के कारण कार्य करने में असमर्थता जताई व बोनस का भुगतान करने की मांग की व भविष्य निधि प्राप्त करने हेतु फार्म 5 व 10 भरकर देने को कहा। प्रार्थी के आग्रह पर उसे फार्म 5 व 10 भरकर दे दिए गए व वर्ष 1990 के बोनस का भुगतान प्रार्थी को कर दिया गया जबकि अन्य श्रमिकों को बोनस का भुगतान दिनांक 7-11-91 को किया गया। अप्रार्थी की ओर से भविष्य निधि के फार्म एम-3 की ओर इस बारे में ध्यान

आकृष्ट किया गया है। यह भी तर्क दिया गया कि प्रार्थी अप्रार्थी संस्थान की अन्य इकाई की दुकान जो जौहरी बाजार में स्थित है उस पर आया व वैकल्पिक कार्य देने हेतु कहा इस पर उसे 700/- रुपये प्रतिमाह पर दुकान पर चौकीदार व अन्य कार्य हेतु रख लिया गया व प्रार्थी को दुकान से जुलाई, 90, से जून, 96 तक भुगतान किया गया जिसका इन्दराज दुकान की रोकड़ बही प्रदर्श एम-4 से एम-37 में दर्ज है। रोकड़ बही जो न्यायालय में प्रस्तुत की गई है वह अप्रार्थी संस्थान की दुकान जो जौहरी बाजार में स्थित है तथा अविभाजित हिन्दू परिवार के तहत रजिस्टर्ड है उसके कोपार्सनर मैसर्स दामोदर दास खण्डेलवाल की है। रोकड़ बही की प्रविष्टियों में दिनांक 10-9-90, 13-4-90, 13-12-90 व 23-6-93 में प्रार्थी का चालक होना इस कारण से लिखा गया कि प्रार्थी पूर्व में चालक के पद पर नियोजन में था। यह भी तर्क दिया गया है कि भुगतान वाउचर का रिकार्ड इस कारण प्रस्तुत नहीं किया जा सका है कि राजस्थान दुकान वाणिज्य एवं संस्थान अधिनियम, 1958 (जिसे बाद में अधिनियम, 1958 कहा गया है) के तहत बनाए गए नियमों के अनुसार एक वर्ष का रिकार्ड रखना अनिवार्य है। अप्रार्थी का यह तर्क कि प्रार्थी ने स्वयं दिनांक 1-4-90 से अप्रार्थी संस्थान की नौकरी छोड़ दी, स्वीकार किए जाने योग्य नहीं है जबकि अप्रार्थी की ओर से प्रस्तुत की गई उपस्थिति पंजिका प्रदर्श एम-40 में दिनांक 3-3-90 तक प्रार्थी की उपस्थित होना दर्ज है तथा इसके आगे 31 मार्च तक अनुपस्थित होने का उल्लेख है। व बिना किसी सूचना के निरन्तर अनुपस्थित होने के कारण उसका नाम हटाये जाने का उल्लेख है। यही नहीं बल्कि कर्मचारी भविष्य निधि योजना के परिपत्र संख्या 5 व 10 प्रदर्श एम-3 में प्रार्थी की दिनांक 1-4-90 को सेवामुक्ति का कारण "रिटायर्ड" होने का उल्लेख किया गया है। अप्रार्थी की ओर से जो मस्टररोल सहायक श्रम आयुक्त के द्वारा देखी गई प्रस्तुत की गई वह प्रदर्श एम-41 से एम-46 ही है। यह भी उल्लेख करना उचित होगा कि स्टाफ उपस्थिति पंजिका में सर्वप्रथम प्रविष्टि माईन्स मैनेजर से प्रारम्भ होती है जबकि मस्टररोल प्रदर्श ए-41 से एम-46 की प्रविष्टियों में माईन्स मैनेजर की कोई प्रविष्टि है ही नहीं इससे प्रकट होता है कि अप्रार्थी द्वारा स्टाफ उपस्थिति पंजिका की पूरी प्रविष्टियां प्रस्तुत नहीं की गई। मस्टररोल प्रदर्श एम-41 से एम-46, 48, 49, 51, 52, 54, 55, 63, 64, 66, 67, 69, 70, 72, 73 व स्टाफ उपस्थिति पंजिका प्रदर्श एम-47, 50, 53, 56, 59 से 61, 65, 68 व एम-76 में प्रार्थी के नाम का उल्लेख नहीं है। उपस्थिति पंजिका माईन्स मैनेजर के नाम से प्रारम्भ होती है। मस्टररोल माईन्स मैनेजर से प्रारम्भ नहीं होती। अप्रार्थी की ओर से प्रार्थी के द्वारा पी. एफ. का भुगतान चाहने बाबत फार्म तलब नहीं किया गया। प्रार्थी पढ़ा-लिखा नहीं है इसी से स्पष्ट है कि यदि वह पढ़ा-लिखा होता तो फार्म भरने हेतु अप्रार्थी को क्यों

कहता? अप्रार्थी की ओर से स्टाफ उपस्थिति पंजिका की पूरी प्रतिलिपि भी प्रस्तुत नहीं की गई। बोनस का भुगतान प्रार्थी को किस तारीख को किया गया ऐसा बोनस रजिस्टर प्रदर्श एम-2 में उल्लेख नहीं है। प्रदर्श एम-2 में अन्य 2 श्रमिकों को बोनस का भुगतान किए जाने की तारीख का भी उल्लेख नहीं है। वैसे भी बोनस का भुगतान प्रार्थी को दिनांक 7-11-91 से पूर्व किए जाने से यह निष्कर्ष नहीं निकाला जा सकता कि प्रार्थी ने स्वयं विपक्षी संस्थान की सेवा छोड़ दी। अप्रार्थी के द्वारा जो कैश बुक की फोटा प्रतियां प्रस्तुत की गई हैं वह किस फर्म की है ऐसा उल्लेख नहीं है। अतः यह नहीं कहा जा सकता कि वह अप्रार्थी संस्थान की दुकान से संबंधित रोकड़ बहियों की प्रविष्टियां हैं। अप्रार्थी की ओर से फर्म दामोदर दास खण्डेलवाल के रजिस्ट्रेशन के प्रमाण-पत्र की प्रतिलिपि प्रस्तुत की गई है। ऐसी कोई साक्ष्य प्रस्तुत नहीं की गई कि उक्त फर्म अविभाजित हिन्दू परिवार के तहत रजिस्टर्ड है व उक्त फर्म का स्वामी अप्रार्थी संस्थान है। यदि प्रार्थी अप्रार्थी संस्थान की दुकान में चौकीदार के पद पर नियोजित होता तो क्योंकि रोकड़बही की प्रविष्टि दिनांक 10-9-90, 13-4-90, 13-12-90 व 23-6-93 में प्रार्थी को बतौर ड्राईवर के रूप में भुगतान बताया जाता। यह तर्क कि प्रार्थी पूर्व में विपक्षी संस्थान में चालक था इस कारण उसके नाम के आगे चालक लिख दिया गया, स्वीकार किए जाने योग्य नहीं है। प्रार्थी जब अप्रार्थी संस्थान में बतौर चालक के कार्यरत हो नहीं था तो क्योंकि उसे मजदूरी का भुगतान अप्रार्थी संस्थान की ओर से चैक दिनांक 7-6-95 व 30-6-95 प्रदर्श डब्ल्यू-2 के द्वारा किया गया। असफल वार्ता प्रतिवेदन प्रदर्श डब्ल्यू-3 में तो यह उल्लेख किया गया है कि प्रार्थी को दिनांक 1-4-90 से 5-7-96 के बीच बिना नियोजन के मानवता के आधार पर 700/- रुपये माहवार पर भुगतान किया गया जो कि अप्रार्थी के द्वारा प्रस्तुत तर्कों के विपरीत है कि प्रार्थी को बतौर चौकीदार के अप्रार्थी संस्थान की दूसरी इकाई में रखा गया। दूसरी ओर प्रार्थी का कथन है कि उसने विपक्षी संस्थान में सन् 1994 से 11-6-96 तक निरन्तर कार्य किया। उसने दिनांक 1-4-90 को अप्रार्थी संस्थान की सेवा छोड़ने से इंकार किया। उक्त विवेचन से यह निष्कर्ष निकलता है कि प्रार्थी ने दिनांक 1-4-90 से अप्रार्थी संस्थान की सेवा स्वयं नहीं छोड़ी। अप्रार्थी के द्वारा दिनांक 1-4-90 के बाद भी प्रार्थी को बतौर चालक के वेतन का भुगतान अप्रार्थी द्वारा प्रार्थी को दिनांक 1-4-90 के बाद भी सन् 90, 93 में बतौर चालक के वेतन का भुगतान करना व सन् 95 में जरिए चैक अप्रार्थी संस्थान की ओर से भुगतान किए जाने से यह प्रकट होता है कि प्रार्थी अप्रार्थी संस्थान के नियोजन में ही था न कि दामोदर दास खण्डेलवाल के नाम की फर्म के नियोजन में। अप्रार्थी द्वारा यह तर्क दिया जाना कि प्रार्थी को भुगतान से संबंधित वाउचर इस कारण से प्रस्तुत नहीं किए जा सके कि प्रार्थी दुकान के नियोजन में था व दुकान पर अधिनियम, 1958 के नियम लागू होते हैं, स्वीकार

नहीं किया जा सकता जबकि प्रार्थी हा दामोदरदास खंडेलवाल के नाम की फर्म के नियोजन में होता प्रमाणित नहीं है। अतः अप्रार्थी की ओर से उठाई गई प्रारम्भिक आपत्ति कि केन्द्र सरकार विवाद को न्यायनिर्णयन करने हेतु निर्दिष्ट करने के लिए सक्षम नहीं थी, स्वीकार किए जाने योग्य नहीं है।

बिन्दु संख्या :—3. अप्रार्थी के द्वारा तर्क दिया गया है कि प्रार्थी की आयु लगभग 75 वर्ष है व वह सन् 1986 में दुर्घटना कर चुका है व उसने कहने के उपरान्त भी मेडिकल नहीं कराया। इस कारण वह कार्य करने में असमर्थ है। प्रार्थी ने अपनी उम्र लगभग 72 वर्ष बताई है व प्रार्थी का कथन है कि अप्रार्थी का यह कथन असत्य है कि वह कार्य करने में असमर्थ है। चालक के पद पर कार्य करने हेतु लाइसेंस की आवश्यकता होती है। प्रार्थी की ओर से ऐसा कोई ड्राईविंग लाइसेंस प्रस्तुत नहीं दिया गया जो कि इस समय भी विधिमाय हो। प्रार्थी यदि चाहता तो वह आंखों के बारे में मेडिकल प्रस्तुत कर सकता था कि इस समय में भी वह चालक के पद पर कार्य करने हेतु सक्षम है। ऐसी परिस्थितियों में यह निष्कर्ष नहीं निकाला जा सकता कि प्रार्थी इस उम्र में शारीरिक रूप से चालक के पद पर कार्य करने हेतु सक्षम है।

बिन्दु संख्या :—4. इस बारे में कोई विवाद नहीं है कि प्रार्थी की सेवामुक्ति दिनांक 6-7-96 को करते समय न तो अधिनियम की धारा 25-एफ के अनुसार नोटिस दिया गया न नोटिस वेतन व न छंटनी का मुआवजा। यह भी विवादित नहीं है कि औद्योगिक विवाद (केन्द्रीय) नियम, 1957 (जिसे बाद में नियम, 1957 कहा गया है) के नियम, 77 के अनुरूप वरिष्ठता सूची का प्रकाशन नहीं दिया गया। प्रार्थी ने अपने कथन में ऐसा उल्लेख नहीं दिया कि सेवामुक्ति किए जाने के समय उससे कनिष्ठ चालक विपक्षी संस्थान में कार्यरत थे, अतः अधिनियम की धारा 25-जी आकृष्ट नहीं होती। प्रार्थी ने कथन दिया है कि उसकी सेवा समाप्ति के बाद अप्रार्थी ने 5-6 चालक रखे हैं। यह स्पष्ट नहीं दिया कि कितने-कितने चालकों को कब-कब नियुक्त किया गया? अतः उसका कथन अस्पष्ट है व ऐसी स्थिति में अधिनियम की धारा 25-एच के प्रावधान आकृष्ट नहीं होते। प्रार्थी ने इस सुझाव को गलत बताया कि अप्रार्थी संस्थान में 100 से कम व्यक्ति कार्य करते हैं। जबकि विपक्षी की ओर से हरिमोहन खंडेलवाल का कथन है कि विपक्षी संस्थान में कुल नियोजित व्यक्तियों की संख्या 100 या 100 से अधिक नहीं रही। ऐसी कोई साक्ष्य प्रस्तुत नहीं की गई जिसके आधार पर यह कहा जा सके कि अप्रार्थी संस्थान में नियोजित कर्मचारियों की संख्या 100 या 100 से अधिक रही हो। ऐसी स्थिति में अधिनियम की धारा 25-एन के प्रावधान भी आकृष्ट नहीं होते।

बिन्दु संख्या :—5. अधिनियम की धारा 25-एफ एवं नियम, 1957 के नियम 77 का उल्लंघन किए जाने के कारण प्रार्थी की सेवा समाप्ति अनूचित एवं अवैध पाई जाती

है। प्रार्थी की उम्र व शारीरिक रूप से चालक के पद पर कार्य करने की अक्षमता को दृष्टिगत रखते हुए प्रार्थी को पुनः सेवा में लिए जाने का आदेश दिया जाना उचित प्रतीत नहीं होता। प्रार्थी की सेवा अवधि को दृष्टिगत रखते हुए उसे बतौर क्षतिपूर्ति के 20,000 रुपये अप्रार्थी से दिलाए जाने का आदेश दिया जाता है। अप्रार्थी प्रार्थी को उक्त रकम पंचाट प्रभावी होने की तारीख को अदा करेगा व अदायगी न करने की दशा में प्रार्थी उक्त रकम पर 10 प्रतिशत वार्षिक व्याज प्राप्त करने का अधिकारी होगा।

पंचाट की प्रतिलिपि केन्द्रीय सरकार को अधिनियम की धारा 17 की उपधारा (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाए।

ह० अपठनीय
पीठासीन अधिकारी

नई दिल्ली, 8 फरवरी, 2002

का.आ. 822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. सेसा गोवा लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मंबई के पंचाट (संदर्भ संख्या 1/42 का 96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-2-2002 को प्राप्त हुआ था।

[सं. एल-29012/51/96-आईआर (एम)]

बी.एम. डेविड, अवसर सचिव

New Delhi, the 8th February, 2002

S.O. 822.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/42 of 96) of the Central Government Industrial Tribunal, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. SESA Goa Ltd. and their workman, which was received by the Central Government on 7-2-2002.

[No. L-29012/51/96-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT :

Shri Justice S. C. Pandey.—Presiding Officer

Ref. No. CGIT-1/42 of 1996

PARTIES :

Employers in relation to the Management of
M/s. Sesa Goa Ltd.

AND

Their Workmen.

APPEARANCES :

For the Management.—Shri P. J. Kamat,
Advocate.

For the Workman : Workman present in person.

STATE : Maharashtra.

Mumbai, dated the 28th day of January, 2001

AWARD

The Central Government, in exercise of its power under clause (d) of sub-section 2A of section 10 of the Industrial Disputes Act, 1947 has referred the dispute between the management of M/s. Sesa Goa Ltd. and its workmen for adjudication by this Tribunal in the following terms :

“Whether the action of Director, Sesa Goa Ltd. P. B. No. 125, Sesaghar Panjim Goa, Patta-403001 in discharging from the services Mr. Shankar P. Naik, Ex-Asstt. Stores Officer, R/o H. No. 235, 1/Sauchowado, Assonora Pin-403503, w.e.f. 4-7-1995 is just, proper and valid? If not, what relief the employees is entitled to?”

Both the workman as well as the Counsel for the management have jointly filed an application today for passing a consent award in terms indicated in the application. I have gone through the application and verified from the workman if he is agreeable to passing of consent award in accordance with the terms mentioned in the application. He gave his assent before this tribunal. I do not find anything unlawful or something opposed to Public policy authorising this tribunal to refuse permission of amicable settlement of dispute. Accordingly, I grant permission and dispose of the reference by the following consent award.

Terms of Settlement

1. It is agreed between the parties that Mr. Shankar P. Naik has no dispute in regard to his termination from 4-7-1995.

2. It is agreed between the parties that Mr. Shankar P. Naik shall be paid an amount of Rs. 1,40,000 (Rupees One Lakh Forty Thousand only) in full and final settlement of all his legal dues, for the services rendered up to 4-7-1995. It is further agreed by Mr. Shankar P. Naik that his gratuity and other legal dues have already been paid to him.

3. It is agreed and declared by Mr. Shankar P. Naik that the amount payable by the Company to him in the manner hereinabove provided for are in full and final settlement and satisfaction of all his claims against the Company including claims for compensation for loss of office or otherwise howsoever.

4. It is agreed by Mr. Shankar P. Naik that he shall not raise any dispute before any authorities including Civil Criminal or High Court in respect of this matter as his Matter is finally settled and that any dispute pending before any other authorities including Civil Court shall be deemed to be withdrawn.

5. It is agreed between the parties that the amount payable within two weeks of filing of this settlement before the Hon'ble Presiding Officer of the Central Government Industrial at Mumbai in reference No. CGIT-1/42 of 1996 for consent award.

6. It is agreed between the parties that the parties shall appear before the CGIT No. 1 at Mumbai and file an application for consent award in terms above.

Accordingly, the reference is answered by saying that dispute between the parties is adjudicated as per terms aforesaid and the parties shall now be governed by terms No. 1 to 5. In view of the subsequent settlement of dispute the reference is disposed by granting this consent award instead of answering the reference which related to the dispute now amicably settled by the parties.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 8 फरवरी, 2002

का.आ. 823.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन रेअर अर्थ्स लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुम्बई के पंचाट (संदर्भ संख्या 2/128 ऑफ 1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-2-2002 को प्राप्त हुआ था।

[सं. एल-29012/24/98-आई.आर. (विविध)]

बी.एम. डेविड, अवसर सचिव

New Delhi, the 8th February, 2002

S.O. 823.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/128 of 1998) of the Central Government Industrial Tribunal, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Rare Earths Ltd. and their workman, which was received by the Central Government on 7-2-2002.

[No. L-29012/24/98-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar, Presiding Officer.

Reference No. CGIT-2/128 of 1998

Employers in relation to the management of
Indian Rare Earths Ltd.,
The Executive Director (P & A),
Indian Rare Earths Ltd.,

Sherbanoo, 6th Floor,
111, Maharshi Karve Road,
Mumbai-400020.

AND

Their Workmen,
Shri B. R. Tandel,
Pratiksha Nagar,
Chawl No. 181, R. No. 1952,
Sion, Koliwada,
Mumbai-400022.

APPEARANCES :

For the Employer : Mr. K. Sreedharan, Advocate
i/b. Mulla and Mulla and Craigie Blunt and
Caroe.

For the Workmen: Mr. Umesh Nabar, Advocate.

Mumbai, dated 8th January, 2002

AWARD—PART-II

By the Interim Award, dated 28th January, 2000, my Learned Predecessor held that the domestic inquiry conducted against the workman was as per the Principles of Natural Justice and that findings of the inquiry officer were not perverse. Consequently the only point as to "Whether the punishment if proportionate or not, in view of the action taken by the management, remains for the consideration of this tribunal in the light of Section 11(A) of the Industrial Disputes Act".

2. Workman, Shri Tandel was charged after suspension on 7-5-92 vide charge sheet dated 6-10-92 for the charges of misappropriation of the company's funds amounting to Rs. 75,761.70 ps. towards the medical re-imburement, leave travel concession, tuition fee and TA and DA and that those charges were found proved in the inquiry as per the inquiry report dated 18-4-94, and that the disciplinary authority since the charge proved, fall under the Rule (5) of CDA rules of the company, dismissed him from service on 4-7-94. The findings recorded by the inquiry officer held not perverse and the inquiry fair. The workman contended that the punishment of dismissal awarded by the management is shockingly disproportionate. The management opposed the same contending that considering the charges punishment is proportionate.

3. On the point of quantum of punishment workman Tandel filed his affidavit by way of Examination-in-Chief (Exhibit-24) and passed purshis (Exhibit-28). No oral evidence was led by the management on this count. Workman filed written submissions (Exhibit-29) and the management (Exhibit-30) alongwith the copies of the decisions.

4. On hearing the counsel and perusing the record as a whole and the written submissions, I record my findings on the following issue Nos. 3 and 4 for the reasons stated below :—

Issues	Findings
3. Whether the action of the management in terminating the services of Shri B. R. Tandel w.e.f. 4-10-94 is justified ?	Yes.

4. If not, to what relief the workman is entitled to ?

As per order, below.

REASONS

5. At the outset it is to be noted that in catena of judgments, it is observed that after the employees services are terminated on proper domestic inquiry held in accordance with the rules of Natural Justice and the conclusions arrived at the inquiry are not perversc, the tribunal is not entitled to consider the propriety and the correctness of the said conclusions. Their Lordships of the Supreme Court in *Sur Enamel and Stamp-ing Works Ltd. Vs. Their Workmen* 1963 II L.J. (S.C.) pg. 367 and further in *J. K. Cotton Spinning and Weaving Co. Ltd. Vs. Its Workmen*, 1965 II L.J. pg. 156 observed :

"This court has pointed out time and again that an industrial tribunal to which a dispute arising from dismissal has been referred for adjudication is not an appeal court having the power to examine the correctness of the conclusions of fact arrived at by a domestic tribunal. Where the industrial tribunal finds that there was nothing improper or unfair in an enquiry conducted by the domestic tribunal and where the action taken against workmen was not actuated by any ulterior motive and where the principles of Natural Justice have not been infringed, it is beyond the powers of an industrial tribunal to set at nought the action taken by the management which lay within its competence under the standing orders."

6. It is seen from the cross-examination of workman (Exhibit-24), he had attained the age of retirement of 60 years on 31-3-99. He has stated in his affidavit that he has put about 26 years clean and unblemished service. He was 55 years old at the time of dismissal and considering his age and the previous record, the punishment is disproportionate. True it is penalty imposed must be commensurate with the gravity of misconduct and that any penalty disproportionate to the gravity of misconduct, could be violative of Art -14 of the constitution. Their Lordships in "*Ranjit Thakur Vs. Union of India*, (1987) 4 S.C.C. 611 (AIR 1987 SC 2386) observed :

"The question of choice and quantum of punishment is within the jurisdiction of the Tribunal (Court Martial). But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh, it should not be so disproportionate to the offence to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as a part of the concept of judicial review would ensure that even on an aspect which is otherwise, within the exclusive power of tribunal, if the decision of the court even as to sentence is an outrageous defiance of logic then sentence would not be immuned from correction. Irrationality and perversity are recognised grounds of judicial review."

The proved charges are about misappropriation of company's funds running into thousands, not in connection with one item, but, in all four items. Even a single act of misconduct if found to be of grave nature, warrants dismissal for which reliance can be had to Punjab and Ors. Vs. Ramsingh Ex-constable, 1992 (4) SCC 54, page, 59.

7. Considering the proved charges and the nature of the same in the light of the rules of the company, warrant dismissal and the company has acted in consonance to the rules. The punishment of dismissal is thus not at all disproportionate. There is no reasonable ground to interfere the punishment awarded, under Section 11A of the Industrial Disputes Act. The action being justified and proper and the punishment being appropriate, workman is not entitled to any relief. Issues are therefore answered accordingly and hence the order :—

ORDER

The action of the management of M/s. Indian Rare Earths Ltd., Mumbai in terminating the services of Shri B. R. Tandel, Cashier, w.e.f. 4-7-1994 is justified and consequently he is not entitled to any reliefs.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 8 फरवरी, 2002

का.आ. 824.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में सिंह स्टोन माईन्स के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 168/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-2-2002 को प्राप्त हुआ था।

[सं. एल-29011/48/98-आई आर (एम)]

बी.एम. डेविड, अवर सचिव

New Delhi, the 8th February, 2002

S.O. 824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 168/99) of the Central Government Industrial Tribunal, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Singh Stone Mines and their workman, which was received by the Central Government on 7-2-2002.

[No. L-29011/48/98-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, 1230, WRIGHT TOWN,
JABALPUR, (M.P.)

Presiding Officer : K. M. Rai.

Case No. CGIT/LC/(R)(168) of 99

The President,
Lal Zanda Mazdoor Union.

Union.

Vs.

M/s. Singh Stone Mines.

... Management.

AWARD

(Passed on 23rd day of January, 2002)

The Government of India, Ministry of Labour, New Delhi, has referred the present dispute vide Order No. L-29011/48/98-IR(M) dated 21-4-98 for adjudication as under :

"Whether the demand for payment of bonus at 20 per cent for the accounting year 1996-97 to the workers employed in Dhaurabhata Dolomite Mines of M/s. Singh Stone Mines is justified? If so, to what relief the workman are entitled?"

2. The applicant has filed application, praying for passing award in terms thereof. He does not want to proceed with his claim as the matter has been finally settled between the parties.

3. In view of the workman's application it is held that no dispute exists between the parties in this case.

4. Copy of the award be sent to the Ministry of Labour, Government of India for publication as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2002

का.आ. 825.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भिलाई स्टील प्लांट के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 90/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-2-2002 को प्राप्त हुआ था।

[सं. एल-29011/39/98-आई आर (एम)]

बी.एम. डेविड, अवर सचिव

New Delhi, the 8th February, 2002

S.O. 825.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 90/1999) of the Central Government Industrial Tribunal, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bhilai Steel Plant and their workman, which was received by the Central Government on 7-2-2002.

[No. L-29011/39/98-IR(M)]
B. M. DAVID, Under Secy.

ANNEXURE

New Delhi, the 8th February, 2002

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, 1230, WRIGHT TOWN,
JABALPUR (MP)

Presiding Officer : K. M. Rai.

Case No. CGIT/LC(R) (90) of 1999

The President,
Pragatisheel Mazdoor Union,
In front of Tehsil Office,
P.O. Dalli-Rajhara, Distt. Durg,
(CG) 491228.

... Union.

Vs.

1. The General Manager (Mines),
Bhilai Steel Plant, Bhilai,
Distt. Durg (CG) 490001. ... Management.
2. The Mines Manager Dalli Mines of BSP,
P.O. Dalli-Raja, Distt. Durg,
(MP) 491228.

AWARD

(Passed on 21st day of January, 2002)

The Government of India, Ministry of Labour, New Delhi, has referred the present dispute vide Order No. L-29011/39/98/IR(M) dated 5th February, 1999 for adjudication as under :

"Whether the demand of the President, Pragatisheel Mazdoor Union, Dalli-Rajhara to regularise Smt. Kumari Bai, W/o Mohan, P. No. 804631 Gang No. 207 of Dalli Mines of BSP w.e.f. 1994 is justified? If so, to what relief the workman is entitled?"

2. The workman remained absent in spite of service of notice on her. It appears that she is not interested in pursuing her claim as referred by the Government of India. Hence, no dispute exists between the parties in the present case.

3. In the light of the fact stated above, it is held that no dispute exists between the parties in this case.

4. Copy of the award be sent to the Ministry of Labour, Government of India as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2002

का.क्रा. 826.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय माल्दर एम.पी. स्टेट माईनिंग कार्पो. के प्रबंधन के संबद्ध शिफ्टों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 200/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-02-2002 को प्राप्त हुआ था।

[सं. एल-29011/19/92-आई आर (एम)]

बी.एम. डेविड, अवर सचिव

S.O. 826.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 200/93) of the Central Government Industrial Tribunal, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M. P. State Mining Corpn. and their workman, which was received by the Central Government on 7-2-2002.

[No. L-29011/19/92-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, 1230, WRIGHT TOWN JABALPUR,
(MP)

Presiding Officer : K. M. RAI.

Case No. CGIT/LC/(R) (200) of 1993

Vs.

Shri Satish Kumar Agarwal,
Contractor, MP State Mining Corporation,
Main Road, PO-Baradwar,
District Bilaspur.

... Workman.

Vs.

Madhya Pradesh Khadan Mazdoor Sangh,
Baradwar.

... Union.

AWARD

(Passed on 23rd day of January, 2002)

The Government of India, Ministry of Labour, New Delhi has referred the present dispute vide Order No. L-29011/19/92-IR(Misc.) dated 17/23-9-93 for adjudication as under :

"Whether the contractual workers engaged in transportation of dolomite by M/s. Satish Kumar Agarwal engaged a contractor in MP State Mining Corp. Ltd., Baraduar at there Dumarpare Dolomite Mines, Baraduar, District Bilaspur are justified to demand payment of Rs. 4.04 as a dearness allowance w.e.f. 1st April, 1991. If not, to what relief these workers are entitled to?"

2. The workman remained absent in spite of service of notice on him. It appears that he is not interested in pursuing him claim as referred by the Government of India. Hence, no dispute exists between the parties in the present case.

3. In the light of the fact stated above, it is held that no dispute exists between the parties in this case.

4. Copy of the award be sent to the Ministry of Labour, Government of India as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 8 फरवरी, 2002

APPEARANCE :

For the Claimant : Sri P. K. G. Menon,
Authorised
Representative

For the Management : M/s. T. S. Gopalan & Co.
Advocates

का.अ. 827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का. 14) कावारा 17 के अनुसरण में, केन्द्रीय सरकार अलंकार शिपिंग एंड ट्रेडिंग कं. के प्रबंधन के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 8/2001) को प्रकाशित करता है, जो केन्द्रीय सरकार को 8-2-2002 को प्राप्त हुआ था।

[सं. एल-33011/3/99-आई आर (एम)]

बी.एम. डेविड, अव्वर सचिव

New Delhi, the 8th February, 2002

S.O. 827.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Alankar Shipping & Trading and their workman, which was received by the Central Government on 8-2-2002.

[No. L-33011/3/99-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHENNAI

Friday, the 28th December, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

Industrial Dispute No. 8/2001
(Tamil Nadu State Industrial Tribunal)

I.D. No. 6/2000)

(In the matter of the dispute for adjudication under Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workmen of Alankar Shipping and Trading Co. (P) Ltd., and the Management of Alankar Shipping and Trading Co. (P) Ltd. Chennai).

BETWEEN

The General Secretary, : I Party/Claimant,
Madras Port & Dock
National Workers Union,

AND

The Manager, : II Party/Management,
Alankar Shipping and
Trading Co. (P) Ltd.
Chennai.

604 GI 2002—6

The Govt. of India Ministry of Labour in exercise of powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-33011/3/99-IR(M) dated 7-10-1999.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 6/2000. When the matter was pending enquiry in that Tribunal, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 8/2001 and notices were sent to the authorised representative for the I Party/Claimant and the counsel on record for the II Party/Management, informing them about the transfer of this case to the file of this Tribunal, with a direction to appear before this Tribunal on 18-1-2001. On receipt of notices from this Tribunal, the authorised representative for the I Party/Claimant and the counsel for the II Party/Management were present and prosecuted this case further.

When the matter came up before me for final hearing on 13-12-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, the written submissions filed by the learned authorised representative for the I Party/Claimant, upon hearing the arguments advanced by the learned counsel for the II Party/Management, this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Alankar Shipping and Trading Co. (P) Ltd., Chennai in terminating the services of the 16 workmen listed in Annexure ‘A’ (Nos. 1 to 16 mentioned by name) is justified? If not, to what relief, they are entitled?”

2. The averments in the Claim Statement filed by the I Party/Claimant, the General Secretary, Madras Port & Dock National Workers Union, Chennai are briefly as follows :—

This industrial dispute has been raised by the I Party/Claimant Madras Port and Dock National Workers Union (hereinafter refers to as the Petitioner) espousing the cause of the 16 workmen who have said to have been terminated from service by the II Party/Management, Alankar Shipping and Trading Co. (P) Ltd. Chennai, (hereinafter refers to as Respondent). The II Party/Alankar Shipping and

Trading Co. (P) Ltd. Chennai is one of the leading stevedoring companies in Chennai Port Trust. It was established about 15 years ago and engaged in stevedoring work for many companies both private and public sector undertakings. The concerned sixteen workers have put up services varying from one year to seven years at the time of termination and they are permanent workers of the Respondent. They are the members of the Petitioner Union. The Respondent was paying them a consolidated salary of Rs. 750 per month. The concerned workmen were denied even the statutory minimum wages and the benefits like Provident Fund and ESI facilities. Therefore, the Petitioner Union submitted a charter of demands to the Respondent on 19-11-98. As soon as the Respondent received the said charter of demands, they terminated the services of the concerned 16 workers with immediate effect without any notice or enquiry. The action of the Respondent is illegal unjust and against the principles of natural justice besides being an act of unfair labour practice as defined under section 2(a) of the Industrial Disputes Act, 1947. The Petitioner Union raised an industrial dispute before the Regional Labour Commissioner, Chennai, but it ended in a failure because the Respondent refused to consider the just demands of the Union. The termination of the concerned 16 workers from service by the Respondent is illegal, unjust and against the principles of natural justice. Hence, the Petitioner Union prays that the Tribunal may be pleased to pass an award reinstating the sixteen workmen with back wages and continuity of service.

3. The Respondent has filed a Counter Statement. The averments in the Counter Statement are briefly as follows:—The Respondent has registered itself as a stevedoring agent. When a ship berths in the harbour for the discharge of cargo, the shipping agents are required to unload the cargo from the board of the ship and place them on the quay. The work of unloading the cargo from the ship to the quay is called stevedoring work. The shipping agents used to appoint stevedoring agents for carrying out the stevedoring work. The stevedoring agents will have to indent labour on the Dock Labour Board. The shipping agents will have to provide necessary equipments like wire ropes, slings to help the stevedoring labour in unloading the cargo. It is only the stevedoring labour provided by the Dock Labour Board, who will be permitted to enter the ship for lashing and unlashings of the cargo. The wire ropes and slings will be kept in the dock office of the Respondent. Gearmen will have to collect the wire ropes and the slings from the dock office and place them near the vessel on the quay. When once the unloading of the cargo is completed, the gearmen will have to remove the equipments to the dock office of the Respondent. The workmen concerned in the reference were all engaged only for doing the work of Gearmen. The Respondent used to act as a stevedoring agent for Shipping Corporation of India for the discharge of their cargo in the Madras Harbour. The contract used to be for a period of two years. The Shipping Corporation of India used to appoint a number of stevedoring agents and they will allot ships to be attended by various stevedoring agents, including the Respondent. On 6-10-96, the Shipping Corporation of India appointed the Respondent as a stevedoring contractor for a period of two years from 6-9-96. However during the two years period i.e. from 6-9-96 to 5-9-98, the

Shipping Corporation of India allotted stevedoring work to the Respondent only on ten occasions between 14-10-96 and 5-9-97. After 5-9-97, the Shipping Corporation of India did not allot any stevedoring work to the Respondent. After September, 1997, the concerned workmen were practically remaining idle and they were paid wages. After September, 1998, the Shipping Corporation of India did not renew the contract, nor was any new contract given to the Respondent. Each of the concerned 16 workmen was paid Rs. 750 irrespective of whether or not they have work. These workmen were to call at the dock office of the Respondent in the respective ships on rotation and if there was stevedoring work, they would attend to the work of placing the equipments near the ship. If there was no work to be attended, they will sign the attendance register and go away. In other words, their services would be utilised only on days and when there was any stevedoring work to be done. After September, 1997 they were paid wages of Rs. 750 without practically any work being done. It would appear that in September, 1998 when once it became clear that Shipping Corporation of India had not renewed the contract of the Respondent the concerned workmen thought that if they raise an industrial dispute and allege termination of employment, it would provide them an opportunity to demand a fabulous amount by way of compensation. It was in that found hope, they stopped reporting for duty submitted a charter of demands and alleged termination of employment. The Respondent denies the allegation that it terminated the services of 16 workmen. On 21-12-98, the Respondent received a charter of demands dated 10-12-98 from Madras Port & Dock National Workers Union. Simultaneously, the Union also addressed a letter to the Regional Labour Commissioner alleging that on 19-11-98, they submitted the charter of demands and immediately on receipt of the demands, the Respondent terminated the services of the workmen. The allegations are not true and they are denied. The 16 workmen stopped reporting for duty on their own volition for the reasons best known to them and the Respondent was in no way responsible for the alleged non-employment. Prior to 1998, the Respondent was acting as a stevedoring agent mainly for Shipping Corporation of India. After September, 1998, the Respondent has not been acting as stevedoring agent for any shipping company. As there was no termination of employment by the Respondent, there is no scope to hold that the termination is illegal and unjust. Therefore, this Hon'ble Court may be pleased to pass an award rejecting the claim of the Petitioner.

4. When the matter was taken up for enquiry, two witnesses on the side of the Petitioner Union and one witness on the side of the Respondent were examined. Eight documents on the side of the I Party/Union have been marked as Ex. W1 to W8 and on the side of the Respondent/Management Seven documents were marked as Ex. M1 to M7. The report of the document expert has been marked as Ex. C1, Court Exhibit. The representative of the I Party/Union and the learned counsel for the II Party/Management have advanced their arguments.

6. The Point for my consideration is —

“Whether the II Party/Management of Alankar Shipping and Trading Co. (P) Ltd., Chennai

has terminated the services of the concerned 16 workmen listed in Annexure 'A' to the Schedule of Reference? If so, whether the action of the Management is justified and to what relief, the concerned 16 workmen are entitled?"

Point :—It is not disputed that the concerned 16 workmen were engaged by the Respondent/Management Alankar Shipping and Trading Co. (P) Ltd., Chennai, for doing the work of gearmen i.e. for placing wire ropes and slings near the ship and removing them after discharge of the Cargo. It is admitted that the Respondent as a stevedoring agent when a ship berths in the harbour for discharge of the cargo, the shipping agents are required to unload the cargo from the board of the ship and place them on the quay, that wire ropes and slings will be kept in the dock office of the Respondent. Gearmen will have to collect the wire ropes and the slings from the dock office and place them near the vessel on the quay and that when once the unloading of the cargo is completed, the gearmen will have to remove the equipments to the dock office of the Respondent. It is also admitted that each of the 16 workmen was paid Rs. 750 for their work as gearmen. It is the contention of the Petitioner Union in the Claim Statement that the concerned workmen were denied the statutory minimum wages and statutory benefits like provident fund and ESI facilities. So, the Petitioner Union submitted a charter of demands to the Respondent on 19-11-98 and as soon as the Respondent received the said charter of demands, the 16 workers were terminated from the service by the Respondent with immediate effect without any notice or enquiry. But the Respondent in their counter has denied the same and has alleged that the Shipping Corporation of India appointed the Respondent as a stevedoring contractor for a period of two years from 6-9-96 and after 5-9-97, the Shipping Corporation of India did not allot any stevedoring work to the Respondent and after September, 1997, the concerned workmen were practically remaining idle and they were paid wages and that after September, 1998, the Shipping Corporation of India did not renew the contract nor was any new contract given to the Respondent. At this juncture, when once it became clear that Shipping Corporation of India had not renewed the contract of the Respondent, the concerned workmen thought that if they raise an industrial dispute and allege termination of employment, it would provide them an opportunity to demand a fabulous amount by way of compensation and it was in that fond hope, the concerned workmen stopped reporting for duty and submitted a charter of demands alleging termination of employment. The Respondent had not terminated the services of those 16 workmen. So, it is to be decided whether there was a factual termination of the concerned 16 workmen from service by the Respondent/Management on 19-11-1998 as alleged by the Petitioner Union.

7. One of the 16 workmen Sri Hari has been examined as WW1. He has filed a proof of affidavit and the same has been requested to be treated as his Chief Examination and he was cross examined by the learned counsel for the Respondent/Management. WW1 Sri Hari has given his evidence stating that he is giving a common evidence and it is applicable to all the concerned 16 workmen mentioned in the Schedule

of Reference of this dispute and his evidence will be the evidence for other workmen mentioned in this dispute. He has stated in his proof of affidavit in para No. 4 that when the Petitioner Union submitted a charter of demands to the Respondent on 19-11-98, the Respondent terminated the services of all the 16 workmen as alleged in the Claim Statement filed by the Petitioner Union. In para 7 of his affidavit, he has stated that it is the Respondent, who refused to employ them from 19-11-98. He has also deposed so as WW1 in the cross examination. It is in evidence that the Respondent is maintaining a Dock Register and it is Ex. M1. When WW1 was questioned in the cross examination with regard to the entries in that register Ex. M1 he admits that the entries in page 100 relates to the date 19-11-1998, while he has admitted in evidence about the entries with regard to serial numbers 9, 10, 5, 16, 13, 8 and 3 about those workmen present or absent for the work. He has deposed that when they used to go to the work spot, their presence will be marked in Ex. M1 later during some occasion. It is his admission that on 12-11-98, he came for work and he had been marked present at page 101 of Ex. M1. But he had not put his signature on that day. It is his further evidence that on coming and seeing him work in the work spot the Manager marked him present in the Ex. M1 register on that day. He further deposed that at about 4.00 p.m. on 19-11-98 M.D. Mr. Ramesh told them that they have no work and under sl. No. 11 Sri J. Ethirajan had signed on 19-11-98 for having come for work and he worked in the first shift on that day. It is his further admission that on that day sl. No. 15 Mr. Selvam sl. No. 2A Mr. Mohan and himself have marked present in the 2nd shift and they were there for the 2nd shift on that day from 2.00 p.m. to 10.00 p.m. It is his further evidence that sl. No. 14 Sri A. Ganesan, sl. No. 6 R. Mani, sl. No. 7 Sri D. Ramesh have been marked present for the 3rd shift on 19-11-98 as it is mentioned in Ex. M1 register. It is his further admission that on page 117 of Ex. M1 entries have been made for 20-11-98 and all the names of 16 workmen have been mentioned there and that out of those 16 ten people have been marked as present while Mr. Nandagopal has put his signature. It is also his admission that till 27-11-98 all the names of these 16 workmen have been mentioned in the register Ex. M1. When his attention was brought to his notice about the signatures available there as P. Hari from page 120 and 122 for the dates 23-11-98 and 25-11-98 respectively, after perusing them, he deposed that those are not his signatures. Those disputed signatures have been marked as Ex. M2 and M3. Since he has disputed his signature, the learned counsel for the Respondent/Management requested the Tribunal to defer the cross examination at this stage to enable him to refer the admitted signature of this witness with that of the disputed signatures marked as Ex. M2 and M3 for sending them for Expert opinion. The witness was asked to put his signature in a white paper and the same has been marked as Ex. M4 i.e. his admitted signature. As per the request made by the counsel for the Respondent/Management that the disputed signatures available in Ex. M1 along with the admitted signature M4 may be sent to handwriting expert for his examination and report. Accordingly, the Handwriting Expert examined those signatures and submitted his report. It is marked as Ex. C1. In that report, the Handwriting Expert has

given his opinion that "the person who wrote the red enclosed signatures stamped and marked S 1 to S 34 also wrote the red enclosed signatures similarly stamped and marked D 1 and D 2." Ex. M 1 register contains the entries from 1-8-98 to 31-12-98. In this register, the signatures put by the witness Sri P. Hari in various pages have been marked by the Handwriting Expert along with the admitted signatures sent separately with that of the disputed signatures which has been marked as D1 and D2 and given Ex. Nos. M2 and M3. He gave his reasons for his conclusions in the reasoning sheet of his report Ex. C1. From this report of the Handwriting Expert, it is seen that WW1 had attended work on 23-11-1998 for which he subscribed his signature Ex. M2 in Ex. M1 register and he has also attended work on 25-11-98 and subscribed his signature Ex. M3 in the Register Ex. M1. This expert opinion given in Ex. C1 has not been disputed by the I Party/Union. On the basis of the report Ex. C1 given by the Handwriting Expert, it is seen that WW1 Sri P. Hari has deposed falsely that Ex. M2 and M3 available in Ex. M1 register for the days 23-11-98 and 25-11-98 respectively that they are not his signatures. He has deposed so, since it is contrary to his earlier evidence and plea of the Petitioner Union that the 16 workmen including himself were terminated from service by the Respondent/Management on 19-11-1998. Further he has admitted in the cross examination that since they wanted to have more wages than the consolidated sum of Rs. 750 they received per month, they have joined the union and they are not willing to go back to work for that Rs. 750 per mensem as wages and they have filed this industrial dispute only with a view to get increased wages. It is the evidence of the General Secretary of that I Party/Union as WW2 that the concerned 16 workmen were not allowed by the Respondent/Management to work subsequent to 19-11-98 and the reason for denying employment to those 16 workmen is a demand made by the Petitioner Union for increasing their wages. This is quite inconsistent to the admission made by the WW1 in the cross examination that they are not willing to go back to work for that Rs. 750 per mensem as wages. It is the admission of WW2 in the cross examination that on 15-6-1998 itself, they conducted a General Body Meeting of the Union in respect of these 16 workmen even before they become members of their Union. It is his evidence in Chief that Ex. W6 is the xerox copy of the charter of demands dated 19-11-98, the Petitioner Union gave to the Respondent/Management. He would further say in his evidence that he came to know about the termination of the services of these 16 workmen only when they came and informed him and he would further say that he knows personally that these 16 workmen were not employed by the Respondent/Management subsequent to 19-11-98. This evidence of WW2 is quite contrary to the entries available in Ex. M1 register, wherein signatures of these workmen are found for their attending work subsequent to 19-11-98. But he denied the suggestion that some workmen out of these 16 workmen were continued to work under the Respondent/Management for some time after 19-11-98. If really, all these 16 workmen have been terminated from service by the Respondent/Management on 19-11-98 as deposed by WW1 and WW2 and pleaded by the Petitioner Union in the Claim Statement, the workmen out of the 16 workmen namely S/Sri K. Ganesan, Sethuraman,

Gandeepan, Thiagarajan, and Sudhir who were re-named absent could not have been terminated from service on 19-11-98, since they have not come for work on that day. When they were not present for work on 19-11-98, how they could have been terminated from service on that day by the Respondent/Management. So, on the face of the admissions made by the WW1 in his evidence, it cannot be said that these 16 workmen have been terminated from service by the Respondent/Management on 19-11-98. Under such circumstances, on the basis of the available oral and documentary evidence, it can be clearly held that the contention of the Petitioner Union that these 16 workmen were terminated from service by the Respondent/Management on 19-11-98 is incorrect. On the other hand, it is seen from the records that some of these workmen were continued to come for work even subsequent to 19-11-98 as it is seen from the entries available in Ex. M1 register. Nothing worth considering has been elicited in the cross examination of WW1 by the learned representative for the I Party/Union in support of the stand taken by the I Party/Union about the alleged termination of these 16 workmen. The representative for the I Party/Union has stated in his written argument that the concerned workmen have not been given an opportunity to explain the reasons for their absence in cases of alleged abandonment and he relied upon a decision of Calcutta High Court reported as 2000 2 LLN 1051. The Petitioner Union is not accepting the contention of the Respondent/Management that it is the case of abandonment of the concerned workmen and not the termination of their service by the Respondent/Management. Hence, the said authority cited by the representative of the I Party/Union is not applicable to this case. No documentary evidence has been filed into Court to show that 16 workmen were permanent employees of the Respondent/Management in support of one such contention raised by the I Party/Union in the Claim Statement. It is the definite case of the Petitioner Union that 16 workmen were terminated from service. As it is held earlier, there was no question of termination of service of these 16 workmen, when the Petitioner Union has failed to prove the same with acceptable evidence. It cannot be said under the facts and circumstances of the case that it is a victimisation of the Respondent/Management against these 16 workmen, since they have placed a charter of demands. From the evidence of WW1 in the cross examination, it is seen that the concerned 16 workmen have decided to raise this industrial dispute through the Union only with a view to get increased wages and they are not willing to go back for work for consolidated wages of Rs. 750 per mensem. Under such circumstances, it cannot be said that the Respondent/Management has terminated the services of these 16 workmen.

8. The learned counsel for the Respondent/Management has advanced an argument relying upon a judgement of the Supreme Court reported as 1990 1 LLJ 344 stating when the case of termination of employment has not been made out a direction for reinstatement with full back wages cannot be given.

9. After considering all these aspects, it can be held that there was no action of the management of Alankar Shipping and Trading Co. (P) Ltd. Chennai by terminating the services of the concerned 16

workmen. Hence, there is no question of such action is justified or not. Under such circumstances, the concerned 16 workmen are not entitled to any relief. Thus, the point is answered accordingly.

10. In the result, an Award is passed holding that the concerned 16 workmen are not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th December, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined:

For I Party/Claimant:

WW1—Shri P. Hari.

WW2—Shri V. C. Munuswamy.

For II Party/Management :

MW1—Shri C. Bharathappa.

DOCUMENTS MARKED :

For I Party/Claimant :

Ex. No.	Date	Description
W1	: 1995—1998—	Xerox copy of the list of Ships in which the concerned workmen were engaged.
W2	: 1998—2000—	Xerox copy of the list of Ships in which the Respondent/Management was engaged as Stevedoring Agents.
W3	: (Series) 16. 12-10-98—	Xerox copy of the Membership forms of the Concerned workmen.
W4	: 15-06-98—	Xerox copy of the Minutes of General Body Meeting of the Petitioner Union.
W5	: 24-10-98—	Xerox copy of the Minutes of General Body Meeting of the Petitioner Union.
W6	: 19-11-98—	Xerox copy of the letter of Petitioner Union addressed to Managing Director of the Respondent raising charter of demands.
W7	: 25-11-98—	Xerox copy of the Minutes of General Body Meeting of the Petitioner Union.
W8	: 24-03-2000—	Xerox copy of the Minutes of General Body Meeting of the Petitioner Union.

For II Party/Management :—

Ex. No.	Date	Description
M1	: 01-08-98 to 31-12-98—	Original attendance register for the workmen Dock maintained in the Dock Office of the Respondent.
M2	: 23-11-98—	Signature of Sri P. Hari, put in page 120 of the Original attendance register.

M3 : 25-11-98—Signature of Sri P. Hari, put in page 122 of the Original attendance register.

M4 : 02-03-2001—Specimen signature of Sri P. Hari drawn in Open Court during cross examination.

M5 : 06-09-96—Xerox copy of the letter of Shipping Corporation of India Ltd. issuing Stevedoring Contract to Respondent.

M6 : 15-07-97—Original Attendance Register for staff maintained in Dock Office of the Respondent.

M7 : 23-06-99—Xerox copy of the circular issued by the Madras Dock Labour Board regarding non-Submission of Indent and failure of confirmation of Indents by G.P. Employers-Engaging of outsiders for work on board the vessels.

Court Exhibit:—

C1 : 15-06-2001—Original report of the Document Expert with his Reasoning sheet and annexures.

नई दिल्ली, 8 फरवरी, 2002

का.आ. 828.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पॉलीड्रिल इंजीनियरिंग प्रा.लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुंबई के पंचाट (संदर्भ संख्या 2/213 का 99) को प्रकाशित करता है, जो केन्द्रीय सरकार को 7-2-2002 को प्राप्त हुआ था।

[सं. एल-30012/42/99—आई आर (एम)]

बी.एम. डेविड, अवर सचिव

New Delhi, the 8th February, 2002

S.O. 828.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/213 of 99) of the Central Government Industrial Tribunal, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Polydrill Engg. Pvt. Ltd. and their workman, which was received by the Central Government on 7-2-2002.

[No. L-30012/42/99-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar.—Presiding Officer.

Reference No. CGIT-9/213 of 1999

Employers in relation to the Management of
The Director, M/s. Polydrill Engg. Pvt.
Ltd.

The Director,
M/s. Polydrill Engg. Pvt. Ltd.,
124, Damji Shamji Udyog Bhavan,
Veera Desai Road,
Andheri (W),
Mumbai-400 053.

AND

Their Workmen.

Mr. S. Narayanan,
Opp. Mukund Beer Bar,
Tal. Panvel, Nhava P.O.,
Raigadh.

APPEARANCES :

For the Employer : Mr. L. L. D'Souza, Repre-
sentative.

For the Workmen : No Appearance.
Mumbai, dated 4th January, 2002

AWARD

The Government of India, Ministry of Labour, by its Order No. L-30012/42 99/IR(M), dt. 4-10-1999, in exercise of the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, have referred the following industrial dispute to this tribunal for adjudication.

"Whether the action of the management of M/s. Polydrill Engg. Pvt. Ltd., Mumbai, in terminating the services of Mr. S. Narayanan, Ex-Mukadam, w.e.f. 20-5-96 is legal and justified? If not, to what relief the workman is entitled?"

2. By the Statement of Claim (Exhibit-6), the workman contended that inquiry held against him is as per the charge-sheet on the misconduct dtd. 16-12-94 to 17-12-94 is improper and that the findings recorded by the inquiry officer are perverse. It is contended that due to the union activity to workman has been dismissed and that his dismissal is illegal. Consequently workman contended to reinstate him in service and to pay back wages. Management Polydrill Engg. Pvt. Ltd., opposed the claim of workman by filing Written Statement (Exhibit-8), contending that the inquiry was fair and proper, and the findings recorded by the inquiry officer are not perverse. It is contended that the workman did not attend the work on Conveyor No. 3 deliberately while on 3rd Shift duty, on 16-12-92 and that on 17-12-94 he abandoned the work without handing over the charge to the reliever Mukaddam on duty, on 1st shift. It is contended that workman had habit of leaving work-place without permission, thereby exposing the plant and machinery to mis-handling and recording excessive quantity of loaded materials dishonestly thereby causing loss to the company which charges have been proved and their being major misconduct on the part of the workman, he has been dismissed from service w.e.f. 20-5-96. Consequently action being justified workman's claim be dismissed. By the Rejoinder (Exhibit-9) workman reiterated the recitals in the statement of claim denying the contentions in the Written Statement.

3. Record shows that on the basis of the pleadings this tribunal framed issues at Exhibit-10 on 16-1-2001, and consequently the matter was fixed for filing of documents and list of witnesses, however, none of the parties filed the list of witnesses though sufficient time granted and consequently the matter was fixed for filing affidavit of workman on 16-8-2001. However, though sufficient time sought, workman and his advocate remained absent nor put affidavit in support of the claim, which shows, workman is not interested in prosecuting the reference. Therefore, the following order is passed :—

ORDER

Reference stands disposed of for non-prosecution.

Dated : 4-1-2002.

S. N. SAUNDANKAR, Presiding Officer.

नई दिल्ली, 15 फरवरी, 2002

का.आ. 829.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑयल इण्डिया लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में श्रम न्यायालय, गुवाहाटी के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-02-2002 को प्राप्त हुआ था।

[सं. एल-30012/19/2000—आई आर (एम)]
बी.एम. डेविड, अवर सचिव

New Delhi, the 15th February, 2002

S.G. 829.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, GUWAHATI as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of OIL INDIA LTD. and their workman, which was received by the Central Government on 14-2-2002.

[No. L-30012/19/2000-IR(M)]
B. M. DAVID, Under Secy.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL : GUWAHATI:
ASSAM

Reference No. 15(C) OF 2000

PRESENT :

Shri K. Sarma, LL.B., Presiding Officer
Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute between :

The Management of the Deputy General Manager,
Oil India Ltd., Guwahati-26.

-Vs-

Their workmen (a) Sh. Dindayal Rathi, Contractor,
Jalpaiguri (b) The Gen. Secy., Oil India Pipeline
Mazdoor (c) Union, Narangi.

Date of Award : 18-1-2002.

AWARD

This industrial dispute has been referred to by the Govt. of India, Ministry of Labour vide order No. L-30012/19/2000/IR(M) dated 30-8-2000 under section 10 of the I.D. Act, 1947 to adjudicate the dispute arising between the management of Oil India Ltd. Guwahati and their workman being represented by Gen. Secretary of Oil India Ltd. Pipe Line Mazdoor Union out of termination of service of Shri Satya Narayan Saha, a Security Guard working under contractor Dindayal Rathi. The appropriate Govt. has framed the following issue for adjudication of matter of controversy between the parties:

"Whether the action of the management of Oil India Ltd. (Pipeline Division) Guwahati as well as Sh. Dindayal Rathi, Contractor engaged by them in terminating the services of Sh. Satya Narayan Saha covered under tripartite settlement dated 23-12-92 is justified? If not, what relief the workman is entitled to?"

On receipt of reference, this tribunal has registered this case and issued notices to both the parties calling upon them to file their written statement/addl. written statement and document, in support of which both the parties have appeared and filed their written statement/addl. written statement and documents. Both management and workman have adduced their own oral evidence in support their pleadings and submitted some documents. The contractor, Shri Dindayal Rathi, on other hand has submitted his written statement, but has adduced no evidence nor contested the case after filing written statement

After completion of oral evidence, the arguments advanced by the learned advocates for the both the parties are heard.

After hearing argument I have carefully perused the entire materials on record and found as follows.

The workman Satya Narayan Saha has been working as Security Guard at pump station No. 7, Madurihat in the establishment of management Oil India Ltd. Pipeline Division, Guwahati. It is found from the materials on record that said S. N. Saha has been engaged by contractor, Dindayal Rathi and has been continuously working since 1984. As the workman was a contractual worker working on wage basis not being equal with the wages paid to the regular employee of the management doing similar nature of work with other workman, settlement was arrived at between the management, Oil India Pipeline Division, Noonmati, Guwahati and the union representing the case of contractual worker, on the conciliation preceding in the office of the Regional Labour Commissioner, Guwahati on 23-12-92 for payment of equal wages to the contractual worker with that of regular workman and in pursuance to said settlement all contractual workers including present one have been paid more wages than earlier. The union raising this industrial dispute on behalf of the workman has filed a list of the contractual worker in this case alongwith the copy of aforesaid settlement as annexure 1 which is subsequently exhibited by the management as ext. A and name of the

present workman is figured in serial No. 221 of the said list. It is also admitted position of fact in the pleading of the union that workman is a contractual worker working in the Pipeline Division of the Oil India Limited and he has been paid through contractor, Dindayal Rathi. It is also found from the materials on record that at the relevant time service of the workman as night Chowkidar was entrusted in the residential complex of the management including M.W. No. 2, P. Kr. Kaur, Deputy Chief Engineer. It is found from materials on record that on the night of 12-8-92 some unknown miscreants had committed decoity in the house of M.W. 2 due to negligence of the workman who was working as night chowkidar as he was found in sleep at the time of occurrence. This being so, M.W. 2 submitted complaint to the contractor, Dindayal Rathi who had accordingly terminated him from his service which fact has been admitted in para 20 of the pleading of the union. The union contended that as the management has initiated the provident fund account of the workman and other financial benefit and his termination through the contractor Dindayal Rathi without holding any domestic enquiry and without complying with provision of Sec. 25F of the I.D. Act is illegal and he needs to be reinstated with back financial benefit.

The management, on the other hand, has contended in their written statement that the workman was never a employee of the management and was contractual worker working under contractor Dindayal Rathi and as such there exists no direct relationship of employer and employee between the management and the workman and hence the present dispute is not maintainable in law. It is also contended that the workman is out and out workers of the contractor being engaged by him and paid through him and subsequently terminated by him and as such the management has no connection with the workman and there arose no necessity on their part for holding any domestic enquiry nor complying the provision of Sec. 25F of the I.D. Act and hence they pray for answering the reference in their favour.

The contractor, Dindayal Rathi has also submitted written statement wherein in para 6 and 7, he has admitted that he has engaged S. N. Saha as contract labour obtaining contract from Oil India Ltd. and his wages were paid by him obtaining from the management by submitting bill to that effect. He has further admitted in his pleading that, he has disengaged him from his service as he has failed to discharge his duty properly.

In course of argument learned advocate for the management has made his submission in the light of the contention raised in the pleading. His main contention is that the workman is a contract labour having been engaged by contractor Dindayal Rathi and as such there is no direct relationship between employer and employee with the management and hence no industrial dispute can be raised by the workman against the management. He has relied his submission the ext. 'A' copy of settlement between union and the management and the list of contract labour submitted therewith where name of the workman is figured in Sl. No. 221 of the list.

These documents have clearly established that the workman is a contract labour and there is no direct relationship between employer and employee. He has further relied his submission on 1998(2) GLT.P.67. The point of law decided by our own High Court is as follows :

“(A) Industrial Disputes Act, 1947 (14 of 1947) S. 10(1) (d)-Reference-Validity of- Labourers employed by the Contractor in the bottling plant of IOC seeking regularisation of their services with the IOC-No relationship of employer and employees between IOC and contract labourers”.

“From the reference order as reproduced above, it would appear that the purpose of reference was to ascertain from the tribunal whether the action of the Oil Corporation in not regularising the services of 17 contractual workers is justified. The terms of reference itself shows that relationship of employer and employees does not exist between the Indian Oil Corporation and the contractual labourers. The materials placed on record also show that the cause of the contractual labourers has been espoused by Mineral Workers Union, Digboi and not by the direct employees of the principal employer. As such, in the absence of a relationship of employers and employees, dispute cannot be brought within the fold of definition of “Industrial Dispute” as defined in Sec. 2(K) of the Industrial Disputes Act.”

The principle of law enunciated by our own High Court in aforesaid case law has established that without direct relationship between employer and employee, no dispute can be raised by employee against an employer. Moreover in the written statement filed by the contractor, he has categorically admitted that workman has been engaged by him after obtaining contract from the management and he was dismissed when he was found in negligence of his duty. The union also raising this industrial dispute on behalf of the workman has also admitted in their pleading that the workman has been dismissed by the contractor at the advice of the management. If all these materials are taken into consideration it has become an established position of fact that the workman is a contract labour engaged by the contractor and not by the management and there exists no direct relationship between employer and employee.

The learned advocate for the workman, on the other hand rebutted the aforesaid submission of the management by submitting that although the workman was contract labour initially but subsequently he become the direct employee of the management by conduct of the management. By ‘conduct’ he wants to mean that neither management nor workman has submitted any licence for engaging and supplying contract labour as require under section 7 and 12 of the contract labour (Regulation & Abolition Act) 1970. It is true that neither management nor contractor has submitted any licence under the aforesaid provision of law empowering them to supply the contract labour, but when fact has been

admitted by the contractor and also been established by the document ext. ‘A’ submitted by the union raising the industrial dispute, there is no necessity of proving the fact by producing licence. It is true that without licence nobody can supply or engage contract labour and without licence any such contract between the parties is nothing but camouflage in order to adopt the unfair labour practice to explain the labour. But as mentioned above, when the fact is admitted by the union rais the dispute by producing documents ext. ‘A’ and also in para 5 of written statement, have no hazitation to hold that the workman was engaged by the contractor and not direct employee of management.

Apart from that the learned advocate for the workman has submitted a lengthy written arguments indicating some points of law and fact, but in view of aforesaid position of law and admitted fact as stated above, I do not see any reason for discussing these points nor it helps the workman’s case in any manner.

In view of my aforesaid discussion on materials on record and the point of law involved therein, management can not be held responsible for terminating the service of the workman.

But so far as the contractor’s liability concerned he can not get rid of liabilities in terminating the service of the workman without giving him proper compensation and without complying with provision of law as laid down in Sec. 25 F of the I.D. Act. The union in the written statement has admitted that the workman has been discharged by the contractor from his service at the advice of the management. But so far as the incident leading to termination of service is concerned the management will definately direct the contractor to remove him from duty due to his negligence of duty on the night when decoiry took place in the house of the M.W.2. The management has given the facility of the provident fund etc. to the workman even though contract labour and under such circumstances he must discharge his duty properly without any negligence on his part or without causing any harm to the management. From the evidence on record, it appears that workman has been given all facilities to take shelter in the security set in the night duty on the gate of the residential complex of the management officers. But he, instead of, doing, his duty properly was in utter negligence to its. But whatever may be the cause of removal, the contract under whom workman was doing more than 240 days of work in a year should not remove him without complying with necessity provision of law as indicated above. As the concern contractor has removed the workman from duty without complying necessary provision of law and hence order of termination is apparently illegal and he needs to be reinstated immediately.

In view of my aforesaid discussion, I hereby answer the reference in favour of management, but against the contractor. The contractor is directed to re-engage the workman within 3 months from the date of this award in any post where he is found suitable considering his age, capacity to work etc.

With this direction this reference is disposed finally. Prepare an award.

K. SARMA, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ. 830 : औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डालमिया मैग्नेसाइट कार्पो. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 427/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-02-2002 को प्राप्त हुआ था।

[सं. एल-29012/2/97-आई आर (एम)]

बी.एम. डेविड, अव्वर सचिव

New Delhi, the 15th February, 2002

S.O. 830.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 427/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dalmia Magnesite Corpn. and their workman, which was received by the Central Government on 14-2-2002.

[No. L-29012/2/97-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHENNAI

Monday, the 31st December, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

Industrial Dispute No. 427/2001

(Tamil Nadu State Industrial Tribunal I.D.
No. 31/97)

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri P. Thangaraj and the Management of Dalmia Magnesite Corporation, Salem.)

BETWEEN

Sri P. Thangaraj. . . I Party/Workman.

AND

The Whole-time Director,
Dalmia Magnesite Corporation,
Salem. . . II Party/Management.

APPEARANCE :

For the Workman : M/s. A. Stephen, K. Gandhikumar and N. Pandy Parthasarathy,
Advocates.

604 GI/2002—7

For the Management : M/s. M. R. Raghavan and
K. Vasu Venkat, Advocates.

The Government of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-29012/2/97-IR(Misc.) dated 14-5-1997.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 31/97. When the matter was pending enquiry in that Tribunal, the Government of India Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 427/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 26-2-2001. On receipt of notice from this Tribunal, counsel on either side present with their respective parties and prosecuted this case further.

When the matter came up before me for final hearing on 28-12-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral evidence let in on the side of the I Party/Workman, and documentary evidence let in on either side, upon hearing the arguments advanced by the learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Government for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of M/s. Dalmia Magnesite Corporation Ltd. Salem, in terminating the services of Sri P. Thangaraj, Watchman, T. No. 395 w.e.f. 1-1-94 is justified? If not, to what relief he is entitled?”

2. The averments in the claim statement of the I Party/Workman Sri P. Thangaraj are briefly as follows :—

The I Party/Workman (hereinafter refers to as Petitioner) was employed in the II Party/Management, Dalmia Magnesite Corporation, Salem (hereinafter refers to as Respondent) as a watchman. While employed as such, he was attending his duties on 16-10-93 between 3.00 pm and 11.00 pm in the New Colony Main Gate. Since he was unwell on that day, he went to General Hospital for treatment. In spite of his ill-health, he attended the work, since there was nobody to replace him on that day. He was not able to stand properly. But some how, he was performing his duties. At about 8.00 pm the Duty Sergeant Sri A. Vijayaraghavan came to the gate in a jeep. He opened the gate and his vehicle came in time. He was standing there severe with fever and the Duty Sergeant asked him why he was not able to stand properly. He told him that he was suffering from fever. The

Duty Sergeant asked him why he had not taken leave and go home? He replied that if he takes leave it will be on loss of pay. Then the Duty Sergeant asked him to sign a blank paper, when he asked him to what it contained, the Duty Sergeant informed him that it is only leave letter. He also told the Petitioner that when he was not able to do his duties properly, since he was sick, he should go on leave. But the petitioner refused to sign the letter. The Duty Sergeant left the place and it is not true that the Duty Sergeant asked him to accompany him to the Government Hospital as he wanted the Petitioner to be medically checked up. It is also not true that the Petitioner ran away from that place. The Petitioner was standing there at his duty place right through till 11.00 pm till his duties are over. On 18th October, the petitioner was issued a charge sheet dated 18-10-93 asking him to submit his explanations to the alleged charges. He submitted his explanation denying all the allegations contained in the charge sheet. As usual, the Respondent/Management ordered an enquiry. The enquiry was not fair and proper. It was conducted against all the principles of natural justice. The Petitioner was not given documents relied on by the Management well in advance. The statement of witnesses were not given to him before starting of the enquiry. The documents on which reliance was placed by the Enquiry Committee was not given to the Petitioner before the charge sheet or before the enquiry started. The Petitioner was not given fair opportunity to lead his evidence and prove his innocence. He was not medically examined for drunkenness. If he had not accompanied them to the Government Hospital, the company Medical Officer should have examined him. Since they could not produce any evidence for drunkenness, the plea of the petitioner refusing to go to the hospital was taken upto dismiss the Petitioner from service. It is not true that the time keeper was present at the time of incident. By citing three earlier charges in the charge sheet, the Respondents have prejudiced the enquiry committee. The enquiry was conducted by the personnel officer. Personnel Manager was supposed to have given a complaint to the Deputy Chargent to initiate action against the Petitioner. The Personnel Officer is the subordinate authority to the Personnel Manager. As per principles of law, the subordinate officer should not conduct the enquiry into the misconduct, when the complainant is a higher grade officer. On this point, the enquiry is vitiated. The charges against the Petitioner are not proved conclusively. The dismissal order passed against the Petitioner is against all principles of natural justice and it has to be set aside. Hence, it is prayed that this Hon'ble Tribunal may be pleased to set aside the dismissal order passed against the Petitioner and direct the Respondent to reinstate the Petitioner with continuity of service, back wages and other attendant benefits.

3. The II Party/Management, Dalmia Magnesite Corporation, Salem has filed a Counter Statement. The averments of the II Party/Management (hereinafter refers to as Respondent) in their counter statement are briefly as follows :—

The Petitioner who was employed as a watchman in the Respondent organisation was found to be in a

drunken state, while he was on duty on 16-10-93 and he was not able to stand properly. At about 6.35 pm during the duty hours he was brought by duty sergeant from the New Colony gate to the factory time office and he was found to be in a drunken state by another watchman and the clerk in the time office. Since it was not the first time, that the Petitioner was found to be under the influence of liquor, a charge sheet dated 18-10-93 was issued to the Petitioner calling upon him to show cause why disciplinary action should not be taken against him for the said misconduct. The explanation offered by the Petitioner was not satisfactory. So a domestic enquiry was conducted by the Personnel Officer to probe into the charges levelled against the Petitioner. In the domestic enquiry, the Petitioner was assisted by a fitter by name Sri S. Lourdhusamy. Five witnesses were examined in the domestic enquiry and the Petitioner was afforded opportunity to cross examine the witnesses. The enquiry was conducted in strict adherence of natural justice. On the basis of various materials placed before the Enquiry Officer, he submitted a report on 18-12-93 holding the Petitioner guilty of the charges levelled against him and that the Petitioner has committed a misconduct as enumerated under the certified standing orders. The Management arrived at a conclusion that the Enquiry Officer's findings were just and proper and by accepting his findings, the Management issued a show cause notice dated 21-12-93 calling upon the petitioner to show cause as to why he should not be dismissed from the service of the Respondent. In the second show cause notice, the Management has taken into consideration the details of past record of the petitioner which have form part of the enquiry proceedings. The Petitioner submitted a reply dated 24th December, 1993. After perusing his reply, and after taking into consideration, the gravity of the misconduct committed by the Petitioner and the past record of the Petitioner, the Respondent dismissed the Petitioner from services on 1st January, 1994. Subsequent to that the Petitioner raised a dispute before the conciliation officer which ultimately failed. On the basis of the failure report, the Government has referred this dispute to this Tribunal for adjudication. The misconduct committed by the Petitioner was not only grave but also offensive. The past record of the Petitioner has also bad. Taking into consideration the totality of the facts, the order of dismissal passed against the petitioner is just and proper and there has been no extenuating circumstances warranting imposition of lesser punishment. The allegation that the Petitioner was not well and was suffering from fever is false. It is also false to state that the Duty Sergeant asked the Petitioner to sign a blank paper. The Duty Sergeant wanted the Petitioner to take the Government Hospital since the company Doctor was not available. The Petitioner only refused to accompany the Duty Sergeant on the fear that they will obtain necessary medical evidence to demonstrate that the Petitioner was under the influence of liquor. The Petitioner and his representative perused all the documents relied on by the Respondent during the enquiry. Therefore, no violation causing prejudice to the Petitioner has occurred in the enquiry. No one prevented the Petitioner to examine his own witness. The Petitioner did not offer himself for medical examination, though he was asked to do. If the Tribunal arrives

at a conclusion that the enquiry is not fair and proper, the Respondent may be permitted to prove the charges levelled against the Petitioner. The punishment of dismissal is also just and proper and does not warrant interference under Section 11A of the I.D. Act. Hence, this Tribunal may be pleased to dismiss the claim of the Petitioner.

4. When the matter was taken up for enquiry, the Petitioner himself has examined as WW1, the only witness for the Petitioner. Exs. W1 to W5 and Ex. M1 the enquiry proceedings and the reports of the Enquiry Officer have been filed. The learned counsel for the II Party represented that the II Party/Management has no oral evidence to let in. The arguments advanced by the learned counsel on either side was heard.

5. The Point for my consideration is—

“Whether the action of the Management of M/s. Dalmia Magnesite Corporation Ltd., Salem, in terminating the services of Shri P. Thangaraj, Watchman T. No. 395 w.e.f. 1-1-94 is justified? If not, to what relief he is entitled?”

Point :—

It is admitted that the I Party/Workman Sri P. Thangaraj was engaged as a Watchman in the Respondent Organisation and was attending his shift duty as Watchman on 16-10-93 between 3.00 pm and 11.00 pm in the New Colony Main Gate and that at about 8.00 pm the Duty Sergeant Sri A. Vijayaraghavan came to the gate in a jeep and the Petitioner opened the gate for the vehicle to come inside. As WW1 the Petitioner has deposed that on that day at about 7.30 pm when he was on duty, as Watchman at the main gate of Executive Quarters of new colony, Personnel Manager with his wife came in a car and he opened the gate for the vehicle to come inside. Ten or fifteen minutes later, a security from Time Office came and informed him that he had been called in the Time Office. He went to the time office in the jeep in which the security came and when he met the Timekeeper Mr. Krishnan there in the time office, he was informed that the Personnel Manager had complained against him that he was holding the gate in an intoxicating mood, when he entered the compound in his car and the time keeper had asked him to go home as he has no duty on that day. Then he went to meet the Secretary of the Union Mr. Lourdhusamy and informed him about the incident. The Secretary informed him to go home after informing the Time Office. Accordingly, he went to the Time Office and informed the Timekeeper that he had not consumed alcohol and went home. On the next morning, when he went and met the Personnel Manager, he asked him to put his signature in a white paper, which he refused to sign and went away. This evidence is quite contrary to what he has pleaded in the Claim Statement. In the Claim Statement, he has stated that the Duty Sergeant asked him to sign in a blank paper stating that it is a leave letter, but he refused to sign that letter. In the cross examination, he has stated that if anything stated contra to his evidence in his claim statement it must be a false one and Ex. W5 O.P. chit does not contain the nature of his ailment.

It is also his admission that for all the day's proceedings of the enquiry, himself and his defence representative Mr. Lourdhusamy have signed all the pages, wherein the enquiry proceedings have been recorded and all the management witnesses have been cross examined by his representative. After he was examined as a defence witness, and the Enquiry Officer told him to produce his witness in the enquiry, he informed him that he had no more witness. It is also his admission in the cross examination that in the enquiry, a question was put to him stating that the Sergeant has asked him to accompany the Hospital and he replied that he refused to go with him and left the place without anybody's permission. After informing him so, he left for home and that he had admitted the misconducts in the Ex. M12 filed in the enquiry as his previous misconducts. It is also his admission that he gave his reply for the 2nd show cause notice he had not stated that the enquiry was not conducted in a fair and proper manner. Ex. M1 clearly shows that in the enquiry the Petitioner, charge sheeted employee was given fair and proper opportunity to put forth his defence effectively and he had taken part in the entire enquiry along with his defence representative and had availed the opportunity of cross examining the Management witnesses by cross examining them in detail through defence representative. Under such circumstances, it cannot be said that the domestic enquiry was not conducted in a fair and proper manner and principles of natural justice were violated. From Ex. M1 enquiry proceedings, it is seen Mr. Vijayaraghavan has given a written complaint about the misbehaviour and misconduct of the Petitioner, when he was on watchman duty during night on 16-10-93. That Vijayaraghavan was the Duty Sergeant in the Security Department. That complaint has been marked as M3 in the domestic enquiry. Ex. W2 is the xerox copy of the charge sheet issued to the Petitioner for the misconduct of the Petitioner on 16-10-93. In that charge sheet, his past record of misconduct of behaving under the influence of alcohol in an objectionable manner has been mentioned and the punishment awarded for the same was also mentioned. All these things are not disputed by the Petitioner. For this charge sheet, the Petitioner has submitted his written explanation which is marked as Ex. M2 in the enquiry. This explanation was received by the II Party/Management for Ex. W2 charge sheet on 25-10-93. From the perusal of the enquiry proceedings in Ex. M1 it is seen that all the managerial witnesses deposed before the Enquiry Officer and they were cross examined by the defence representatives in detail, nothing has been mentioned earlier with regard to the conduct of the domestic enquiry as it was unfair and improper. Only in the Claim Statement para 4, it is alleged by the Petitioner that the enquiry was not fair and proper and the principles of natural justice were not followed. From the enquiry proceedings, it is seen that the list of witnesses, list of documents, copies of documents were placed for the perusal of the Petitioner and the defence representative. In his explanation Ex. M2, marked in the domestic enquiry, the Petitioner has not stated that he was prejudiced for non-furnishing of witness list and the documents replied upon by the Management. He had also not asked for the same. When he was informed at the inception of the enquiry about the procedure to be adopted in the enquiry, he

has not demand even at that time about the list of witnesses and copies of documents relied upon by the Management. But he has given consent for the enquiry to be proceeded with. In his reply to the second show cause notice under Ex. W4 also he has not stated so. Hence, it cannot be said that the Petitioner was very much prejudiced for non-furnishing of list of witnesses and copies of documents. In that Ex. W4 also, it is not the contention of the Petitioner that the domestic enquiry was not conducted in a fair and proper manner. A perusal of the enquiry proceedings clearly shows that all the management witnesses were cross examined in respect of the documents relied upon by the Management.

6. Ex. W5 is the O. P. Chit relied upon by the Petitioner for his averment that he was not well on 16th October, 1993. In the evidence, he has admitted that the name of the Doctor or Doctor's seal and the diagnosis of ill-health and the ailment for which he was treated as out patient are not mentioned in Ex. W5. The credibility of that document is not established before this Tribunal. A perusal of the Enquiry Officer's report under Ex. M1 clearly shows that after considering the oral and documentary evidence placed before him, he has given the findings by stating all the witnesses cogently stated before him about the status of the Petitioner at the time of incident, alleged in the charge sheet. Hence, it cannot be said that the findings of the Enquiry Officer is perverse. On the other hand, it is supported by materials placed before him in the domestic enquiry. From all these things, it can be concluded that the action of the Management of M/s. Dalmia Magnesite Corporation Ltd. Salem in terminating the services of Sri P. Thangaraj, Watchman w.e.f. 1-1-1994 is justified. Thus, the point is answered accordingly.

In the result, an award is passed holding that the action of the Management of M/s. Dalmia Magnesite Corporation Ltd., Salem, in terminating the services of Shri P. Thangaraj, Watchman w.e.f. 1-1-94 is justified. Hence, the concerned workman is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him and corrected and pronounced by me in the open court on this day the 31st December, 2001.)

K KARTHIKEYAN, Presiding Officer

Witnesses Examined :

For the I Party/Workman.—WW1 Shri P. Thangaraj.

For the II Party/Management.—None.

DOCUMENTS MARKED :

For the I Party/Workman :

Ex. No. Date Description

W1 13-12-80—Xerox copy of the appointment order issued to the Petitioner by Respondent/Management.

W2 18-10-93—Xerox copy of the charge sheet issued to the Petitioner.

W3 5-11-93—Xerox copy of the payment slip issued to Petitioner by the Respondent/Management.

W4 21-12-93—Xerox copy of the show cause notice issued to the Petitioner by Respondent Management.

W5 16-10-93—Xerox copy of the O. P. chit.

For the II Party/Management :

M1 Nil—Xero copies of the enquiry report, enquiry Proceedings and its exhibits.

नई दिल्ली, 15 फरवरी, 2002

का.आ. 831: औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिनरल एक्सप्लोरेशन कार्पो.लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-02-2002 को प्राप्त हुआ था।

[सं. एल-29012/2, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28/94-आई आर (एम)]

बी.एम. डेविड, अवर सचिव

New Delhi, the 15th February, 2002

S.O. 831.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mineral Exploration Corpn. Ltd. and their workman, which was received by the Central Government on 14-2-2002.

[No. L-29012/2, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28/94-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.

Dated, 23rd day of September, 1995

Industrial Dispute Nos. 15 of 1994 to 32 of 1994 and 88 of 1994

Industrial Dispute No. 15 of 1994

BETWEEN

Sri Masood Pasha, Ex-workman, MECL, H. No. 1-16-300, SC/10, Amar Automobile Opp: H. P. Petroleum, Industrial Area, Sirpur Kaghaznagar (PO), Distt. Adilabad.

.. Petitioner

AND

The Project Manager, MECL
(Kaghaznagar Project), C/o Mancharial
Auto Centre, Ballampalli Road,
Mancharial-504-208,
(Distt. Adilabad).

.. Respondent

The Government of India, Ministry of Labour by
its Order No. L-29012/7/94-IR(Misc.) dated 4-4-94
made this reference for adjudication of the dispute
annexed in the schedule which reads as follows :

“Whether the action of the Management of Sirpur
Kaghaznagar Project, M.E.C.L., District
Adilabad in retrenching the services of Sri
Masood Pasha in violation of Section 25-F
of the I.D. Act is legal and justified? If
not, to what relief the workman is entitled?”

This reference has been registered as Industrial Dispute
No. 15 of 1994 on the file of this Tribunal.

Industrial Dispute No. 16 of 1994

BETWEEN

Sri B. Kumar Swamy, Ex-Workman,
MECL, H. No. 1-16-300, SC/10 Amar
Automobile, Opp. H. P. Petroleum,
Industrial Area, Sirpur Kaghaznagar
(PO), Distt. Adilabad

.. Petitioner

AND

The Project Manager, MECL(Kaghaznagar
Project) C/o Mancharial Auto Centre,
Ballampalli Road,
Mancharial-504208.

.. Respondent

The Government of India, Ministry of Labour, by
its Order No. L-29012/2/94-IR(Misc.), dated 4th
April, 1994 made this reference for adjudication of
the dispute annexed in the schedule which reads as
follows :

“Whether the action of the Management of Sirpur
Kaghaznagar Project, M.E.C.L., District,
Adilabad in retrenching the services of Sri
B. Kumar Swamy, in violation of Section
25-F of the I.D. Act is legal and justified?
If not, to what relief the workman is
entitled?”

This reference has been registered as Industrial Dispute
No. 16 of 1994 on the file of this Tribunal.

Industrial Dispute No. 17 of 1994

BETWEEN

Sri K. Srinivasa, Ex-workman, MECL,
H. No. 1-16-300, SC/10 Amar
Automobile Opp. H. P. Petroleum,
Industrial Area, Sirpur Kaghaznagar
(PO) District Adilabad.

.. Petitioner

AND

The Project Manager, MECL (Kaghaznagar
Project) C/o Mancharial Auto Centre,
Bellampalli Road, Mancharial-504208
(District Adilabad).

.. Respondent

The Government of India, Ministry of Labour, by
its Order No. L-29012/8/94-IR(Misc.), dated 4th
April, 1994 made this reference for adjudication of
the dispute annexed in the schedule which reads as
follows :

“Whether the action of the Management of Sirpur
Kaghaznagar Project, M.E.C.L., District
Adilabad in retrenching the services of Sri
K. Srinivas, Ex-workman, in violation of
Section 25-F of the I.D. Act is legal and
justified?”

If not, to what relief the workman is en-
titled?”

This reference has been registered as Industrial Dispute
No. 17 of 1994 on the file of this Tribunal.

Industrial Dispute No. 18 of 1994

BETWEEN

Sri V. Sreeramulu, Ex-workman, MECL.,
H. No. 1-16-300, SC/10 Amar
Automobile, Opp. H. P. Petroleum,
Industrial Area, Sirpur Kaghaznagar
(PO), District Adilabad.

.. Petitioner

AND

The Project Manager, MECL.,
(Kaghaznagar Project), C/o Mancharial
Auto Centre, Bellampalli Road,
Mancharial-504208,
(District Adilabad).

.. Respondent

The Government of India, Ministry of Labour by
its Order No. L-29012/9/94-IR(Misc.), dated 4th
April, 1994 made this reference for adjudication of
the dispute annexed in the schedule which reads as
follows :

“Whether the action of the Management of Sirpur
Kaghaznagar Project, M.E.C.L., District
Adilabad in retrenching the services of Sri
V. Sreeramulu in violation of Section 25-F
of the I.D. Act is legal and justified? If
not, to what relief the workman is entitled?”

This reference has been registered as Industrial Dispute
No. 18 of 1994 on the file of this Tribunal.

Industrial Dispute No. 19 of 1994

BETWEEN

Sri D. Sreevardhan, Ex-Workman, MECL.,
H. No. 1-16-300, SC/10 Amar
Automobile Opp. H. P. Petroleum,
Industrial Area, Sirpur Kaghaznagar
(PO), Distt. Adilabad.

.. Petitioner

AND

The Project Manager (Kaghaznagar
Project), C/o Mancharial Auto Centre,
Bellampalli Road, Mancharial-504208,
(District Adilabad).

.. Respondent

The Government of India, Ministry of Labour by its
Order No. L-29012/10/94-IR(Misc.), dt. 4-4-94 made

this reference for adjudication of the dispute annexed in the schedule reads as follows :

“Whether the action of the Management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri D. Sreevardhan, in violation of Section 25-F of the I.D. Act is legal and justified ? If not, to what relief the workman is entitled ?”

This reference has been registered as Industrial Dispute No. 15 of 1994 on the file of this Tribunal.

Industrial Dispute No. 20 of 1994

BETWEEN

Sri D. Vasanth Rao, Ex-Workman, MECL,
H. No. 1-16-300, SC/10 Amar
Automobile, Opp. H. P. Petroleum,
Industrial Area, Sirpur Kaghaznagar
(A.P.), District Adilabad. . . Petitioner

AND

The Project Manager (Kaghaznagar Project), C/o Mancheria Auto Centre,
Bellampalli Road, Mancheria-504208,
District Adilabad. . . Respondent

The Government of India, Ministry of Labour by its Order No. L-29012/11/94-IR(Misc.), dt. 4-4-1994 made this reference for adjudication of the dispute annexed in the schedule which reads as follows :

“Whether the action of the Management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri D. Vasanth Rao in violation of Section 25-F of the I.D. Act is legal and justified ? If not, to what relief the workman is entitled ?”

This reference has been registered as Industrial Dispute No. 20 of 1994 on the file of this Tribunal.

Industrial Dispute No. 21 of 1994

BETWEEN

Sri B. Bandu, Ex-Workman, MECL,
H. No. 1-16-300, SC/10 Amar
Automobile Opp. H. P. Petroleum,
Industrial Area, Sirpur Kaghaznagar
(PO), District Adilabad. . . Petitioner

AND

The Project Manager, MECL,
(Kaghaznagar Project), C/o Mancheria Auto Centre, Bellampalli Road,
Mancheria-504208,
(District Adilabad). . . Respondent

The Government of India, Ministry of Labour by its Order No. L-29012/12/94-IR(Misc.), dt. 4-4-1994 made this reference for adjudication of the dispute annexed in the schedule which reads as follows :

“Whether the action of the management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri

P. Bandu in violation of Section 25-F of the I.D. Act is legal and justified ? If not, to what relief the workman is entitled ?”

This reference has been registered as Industrial Dispute No. 21 of 1994 on the file of this Tribunal.

Industrial Dispute No. 22 of 1994

BETWEEN

Sri R. Shyama Rao, Ex-Workman, MECL,
H. No. 1-16-300, SC/10, Amar
Automobile Opp. H. P. Petroleum,
Industrial Area Sirpur Kaghaznagar
(PO), District Adilabad. . . Petitioner

AND

The Project Manager, MECL (Kaghaznagar Project), C/o Mancheria Auto Centre,
Bellampalli Road, Mancheria-504208,
(District Adilabad). . . Respondent

The Government of India, Ministry of Labour, by its Order No. L-29012/16/94-IR(Misc.), dt. 4-4-1994 made this reference for adjudication of the dispute annexed in the Schedule which reads as follows :

“Whether the action of the Management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri R. Shyama Rao in violation of Section 25-F of the I.D. Act is legal and justified ? If not, to what relief the workman is entitled ?”

This reference has been registered as Industrial Dispute No. 22 of 1994 on the file of this Tribunal.

Industrial Dispute No. 23 of 1994

BETWEEN

Sri K. Mallesh, Ex-Workman, MECL,
No. 1-16-300, SC/10, Amar Automobile,
Opp. H. P. Petroleum, Industrial Area,
Sirpur Kaghaznagar (PO),
District Adilabad. . . Petitioner

AND

The Project Manager (Kaghaznagar Project) C/o Mancheria Auto Centre,
Ballampalli Road, Mancheria-504 208
(Distt. Adilabad). . . Respondent

The Government of India, Ministry of Labour, by its Order No. L-29012/17/94-IR(Misc.), dated 4-4-1994 made this reference for adjudication of the dispute annexed in the schedule which reads as follows :

“Whether the action of the management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri K. Mallesh in violation of Section 25-F of the I. D. Act is legal and justified ? If not, to what relief the workman is entitled ?”

This reference has been registered as Industrial Dispute No. 23 of 1994 on the file of this Tribunal.

Industrial Dispute No. 24 of 1994.

BETWEEN

Sri M. Pocham, Ex- Workman, MECL,
H. No. 1-16-300, SC/10 Amar Auto-
motives, Opp. H. P. Petroleum,
Industrial Area, Sirpur Kaghaznagar
(P.O.), Distt. Adilabad. . .Petitioner

AND

The Project Manager, MECL (Kaghaz-
nagar Project) C/o Mancherial Auto
Centre, Bellampalli Road,
Mancherial-504208 (Distt. Adilabad), . .Respondent

The Government of India, Ministry of Labour, by
its Order No. L-29012/18/94-IR(Misc.), dated
4-4-1994 made this reference for adjudication of the
dispute annexed in the schedule which read as fol-
lows :

“Whether the action of the management of
Sirpur Kaghaznagar Project, M.E.C.L., Dis-
trict Adilabad in retrenching the services of
Sri M. Pocham in violation of Section
25-F of the I. D. Act is legal and justi-
fied? If not, to what relief the workman
is entitled?”

This reference has been registered as Industrial
Dispute No. 24 of 1994 on the file of this Tribunal.

Industrial Dispute No. 25 of 1994.

BETWEEN

Sri T. Lachariah, Ex-Workman, MECL,
H. No. 1-16-300, SC/10 Amar Auto-
mobile Opp. H. P. Petroleum, Industrial
Area, Sirpur Kaghaznagar (P.O.),
District Adilabad. . .Petitioner

AND

The Project Manager, MECL (Kaghaz-
Nagar Project), C/o Mancherial Auto
Centre, Bellampalli Road,
Mancherial-504208 (Distt. Adilabad). . .Respondent

The Government of India, Ministry of Labour, by
its Order No. L-29012/19/94-IR (Misc.), dated
4-4-1994 made this reference for adjudication of the
dispute annexed in the schedule which reads as
follows :—

“Whether the action of the management of
Sirpur Kaghaznagar Project, M.E.C.L., Dis-
trict Adilabad in retrenching the services of
Sri T. Lachariah in violation of section
25-F of the I. D. Act is legal and justi-
fied? If not, to what relief the workman
is entitled?”

This reference has been registered as Industrial
Dispute No. 25 of 1994 on the file of this Tribunal.

Industrial Dispute No. 26 of 1994.

BETWEEN

Sri P. Shankar, Ex-Workman, M.E.C.L.,
H. No. 1-16-300, SC/10 Amar Auto-
mobile Industrial Area, Sirpur
Kaghaznagar (P.O.),
District Adilabad. . .Petitioner

AND

The Project Manager, MECL (Kaghaz-
nagar Project) C/o Mancherial Auto
Centre, Bellampalli Road,
Mancherial-504208 (Distt. Adilabad). . .Respondent

The Government of India, Ministry of Labour, by
its Order No. L-29012/20/94-IR(Misc.), dated
4-4-1994 made this reference for adjudication of the
dispute annexed in the schedule which reads as
follows :

“Whether the action of the management of
Sirpur Kaghaznagar Project, M.E.C.L., Dis-
trict Adilabad in retrenching the services of
Sri P. Shankar in violation of Section 25-F
of the I. D. Act is legal and justified? If
not, to what relief the workman is entitl-
ed?”

This reference has been registered as Industrial
Dispute No. 26 of 1994 on the file of this Tribunal.

Industrial Dispute No. 27 of 1994.

BETWEEN

Sri T. Narayana, Ex-workman, MECL.,
H. No. 1-16-300, SC/10 Amar Auto-
mobile Opp. H. P. Petroleum, Industrial
Area, Sirpur Kaghaznagar (P.O.),
District Adilabad. . .Petitioner

AND

The Project Manager, MECL (Kaghaz-
nagar Project) C/o Mancherial Auto
Centre, Bellampalli Road,
Mancherial-504208 (Distt. Adilabad). . .Respondent.

The Government of India, Ministry of Labour, by
its Order No. L-29012/21/94-IR(Misc.), dated
4-4-1994 made this reference for adjudication of the
dispute annexed in the schedule which reads as
follows :

“Whether the action of the management of
Sirpur Kaghaznagar Project, M.E.C.L., Dis-
trict Adilabad in retrenching the services of
Sri T. Narayana in violation of Section
25-F of the I. D. Act is legal and justi-
fied? If not, to what relief the workman
is entitled?”

This reference has been registered as Industrial
Dispute No. 27 of 1994 on the file of this Tribunal.

Industrial Dispute No. 28 of 1994.

BETWEEN

Sri K. Srihari, Ex-workman, MECL,
H. No. 1-16-300, SC/10 Amar Auto-
mobile Opp. H. P. Petroleum, Industrial
Area, Sirpur Kaghaznagar (P.O.),
District Adilabad. . .Petitioner

AND

The Project Manager, MECL (Kaghaz-
nagar Project) C/o Mancherial Auto
Centre, Bellampalli Road,
Mancherial-504208 (Distt. Adilabad). . .Respondent

The Government of India, Ministry of Labour, by its Order No. L-29012/23/94-IR(Misc.), dated 4-4-1994 made this reference for adjudication of the dispute annexed in the schedule which reads as follows :

“Whether the action of the management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri K. Srihari in violation of Section 25-F of the I. D. Act is legal and justified? If not, to what relief the workman is entitled?”

This reference has been registered as Industrial Dispute No. 28 of 1994 on the file of this Tribunal.

Industrial Dispute No. 29 of 1994.

BETWEEN

Sri T. Krishna, Ex-Workman, MECL, H. No. 1-16-300, SC10 Amar Automobile Opp. H. P. Petroleum, Industrial Area, District Adilabad, ..Petitioner.

AND

The Project Manager, MECL (Kaghaznagar Project) C/o Mancherial Auto Centre, Bellampalli Road, Mancherial-504208 (Distt. Adilabad). ..Respondent

The Government of India, Ministry of Labour, by its Order No. L-29012/24/94-IR, (Misc.), dated 4-4-1994 made this reference for adjudication of the dispute annexed in the schedule which reads as follows :

“Whether the action of the management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri T. Krishna in violation of Section 25-F of the I. D. Act is legal and justified? If not, to what relief the workman is entitled?”

This reference has been registered as Industrial Dispute No. 29 of 1994 on the file of this Tribunal.

Industrial Dispute No. 30 of 1994.

BETWEEN

Sri P. Ramu, MECL, Ex-Workman, H. No. 1-16-300, SC10 Amar Automobile Opp. H. P. Petroleum, Industrial Area, Sirpur Kaghaznagar (P.O.), District Adilabad. ..Petitioner

AND

The Project Manager, MECL (Kaghaznagar Project) C/o Mancherial Auto Centre, Bellampalli Road, Mancherial-504208 (Distt. Adilabad). ..Respondent

The Government of India, Ministry of Labour, by its Order No. L-29012/25/94-IR(Misc.), dated 4-4-1994 made this reference for adjudication of the dispute annexed in the schedule which reads as follows :

“Whether the action of the management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri P. Ramu in violation of Section 25-F of the I. D. Act is legal and justified? If not, to what relief the workman is entitled?”

This reference has been registered as Industrial Dispute No. 30 of 1994 on the file of this Tribunal.

Industrial Dispute No. 31 of 1994.

BETWEEN

Sri Biswa Deb Siricar, Ex-workman, MECL, H. No. 1-16-300, SC10, Amar Automobile Opp. H.P. Petroleum, Industrial Area, Sirpur Kaghaznagar (P.O.), Distt. Adilabad. ..Petitioner.

AND

The Project Manager, MECL (Kaghaznagar Project) C/o Mancherial Auto Centre, Bellampalli Road, Mancherial-504208 (Distt. Adilabad). ..Respondent

The Government of India, Ministry of Labour, by its Order No. L-29012/26/94-IR(Misc.), dated 4-4-1994 made this reference for adjudication of the dispute annexed in the Schedule which reads as follows :

“Whether the action of the management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri Biswa Deb Siricar, in violation of Section 25-F of the I. D. Act is legal and justified? If not, to what relief the workman is entitled?”

This reference has been registered as Industrial Dispute No. 31 of 1994 on the file of this Tribunal.

Industrial Dispute No. 32 of 1994.

BETWEEN

Sri P. Reddy Raju, Ex-Workman, MECL, H. No. 1-16-300, SC10 Amar Automobile Opp. H. P. Petroleum, Industrial Area, Sirpur Kaghaznagar (P.O.), District Adilabad. ..Petitioner

AND

The Project Manager, MECL, (Kaghaznagar Project), C/o Mancherial Auto Centre, Bellampalli Road, Mancherial-504208 (Adilabad). ..Respondent

The Government of India, Ministry of Labour, by its Order No. L-29012/28/94-IR(Misc.), dated 4-4-1994 made this reference for adjudication of the dispute annexed in the schedule which reads as follows :

“Whether the action of the management of Sirpur Kaghaznagar Project, M.E.C.L., District Adilabad in retrenching the services of Sri P. Reddy Raju in violation of Section

25-F of the I. D. Act is legal and justified? If not, to what relief the workman is entitled?"

This reference has been registered as Industrial Dispute No. 32 of 1994 on the file of this Tribunal.

Industrial Dispute No. 88 of 1994.

BETWEEN

Syed Saleem, H. No. 1-16-300, SC/10,
Amar Automobile, Opp. H. P. Petroleum,
Industrial Area, Sirpur Kaghaz-
nagar (P.O.) Adilabad. . . Petitioner

AND

The Project Manager, Mineral Explo-
ration Corporation, Kaghaznagar Project,
C/o Mancherla Auto Centre,
Bellampalli Road, Mancherla,
Adilabad. . . Respondent

The Government of India, Ministry of Labour, by its Order No. L-29012/22/94-IR (Misc.), dated 4-4-1994 made this reference for adjudication of the dispute annexed in the Schedule which reads as follows :

"Whether the action of the management of Sirpur Kaghaznagar Project, Mineral Exploration Corporation Limited, Distt. Adilabad, in retrenching Sri Syed Saleem in violation of Section 25-F of the I. D. Act is legal and justified? If not, to what relief the workman is entitled?"

This reference has been registered as Industrial Dispute No. 88 of 1994 on the file of this Tribunal.

APPEARANCES :

Sri P. B. Vijaya Kumar and others for Petitioner.—Workmen.

Sri M. P. Chandramouli, Advocate for the Respondent.

2. The Government of India, Ministry of Labour made these references under Section 10(1) (d) and (2A) of the Industrial Disputes Act, 1947 (hereinafter called as the Act) for adjudication of common industrial dispute i.e. whether the action of the Respondent-Management in retrenching the Petitioners--Workmen in these reference is just and legal.

3. As per the order on Joint Memo filed on behalf of the Petitioners and the Respondent in all these references i.e., Industrial Dispute Nos. 15/94 to 32/94 and 88/94, these matters are tried jointly and the evidence has been recorded in I. D. No. 28 of 1994 and the same has been treated as evidence in other cases and all the cases are being disposed of by a

COMMON AWARD

4. The Petitioners in all these references worked under the Respondent-Management. They have filed separate claim statements on their behalf with common allegations. The material averments in the claim statements filed on behalf of the Petitioners workman are as follows ;
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The Petitioners were appointed as unskilled casual labour by the Respondent Management w.e.f. 16-1-91 and their names were sponsored by the Employment Exchange, Bellampalli, Adilabad District. They continuously worked for a period of 2-1/2 years and their services were retrenched w.e.f. 30-6-1993 without following the mandatory provisions prescribed under Section 25-F of the Act. The appointment of the petitioners was on permanent basis. The Respondent Management is not a temporary establishment. It has been described as a temporary establishment by the management with a view to avoid the legal obligations. The Respondent Management undertakes projects which are located in different parts of the country. When a project work is completed, the workmen may easily be transferred to another worksite. There are more than 100 workmen working in the Respondent Corporation and as such the provisions under Section 25-N of the Act are applicable. Three months notice was not issued to the workmen and permission of the appropriate Government was not obtained before effecting their retrenchment. Even if it is presumed that 25-N of the Act is not applicable, Section 25-F applies. Even then the provisions of Section 25-F of the act are not complied with. Hence, the retrenchment is void. The workmen had rendered continuous service of more than 240 days and as such the provisions of Section 25-F of the Act are applicable and termination of their services amounts to retrenchment. If there is no work in the present Unit, the workers as well can be transferred to another unit. Hence, retrenchment is vitiated by malafides and it also amounts to unfair labour practice. Each workmen was getting wages of Rs. 1500 per month on the date of retrenchment. They have not secured employment anywhere subsequent to their retrenchment inspite of their best efforts, hence the petitioners pray that they may be reinstated with back wages with continuity of service and other consequential and attendant benefits.

5. The Respondent-Corporation filed separate counters in all the matters with common grounds. The material averments in all the counters filed by the Respondent-Corporation are as follows :—

The Respondent, Mineral Exploration Corporation Limited is a premier public sector undertaking engaged in the exploration of mineral resources in the country. It was established in October, 1972 by the Government of India to expedite and bridge the gap between the discovery of mineral prospects and its eventual exploitation to speed up the industrial development in the country. The Corporation primarily executes work on behalf of the Government of India and assignments offered by the sister public sector undertakings of Central and State Governments. The activities of the Corporation are, as such, mainly dependant upon the work assigned to it by the client organisations. The work carried out by the Corporation is more of research and development type and if results are found encouraging the Government takes further steps for the exploitation of minerals. The responsibility of the Corporation ends with the submission of detailed exploration report which is used by the developmental agency for the mine planning, designing and pre-investment decisions. The exploration work is carried out

in different projects located in different parts of the country including some in the remotest areas where work may be assigned by the Government/client organisations without any definite periods. The nature of work of the Corporation entails employment of two different and distinct categories of workmen : (1) regular workmen who are essentially highly skilled technical staff and form the core category whose services are essential for regular operation and maintenance of different highly sophisticated mining and drilling machineries. They are permanent workmen essential for carrying out mineral exploration work and scientific and technical activities of the Corporation; (2) Temporary contingent unskilled workmen who are engaged for work/job which is temporary in nature and likely to be completed in a limited period, and such jobs are mostly unskilled in nature for which physical fitness and easy availability in nearby village are required. The Corporation has been engaging the contingent workman on a specific contract of employment. On completion of work for which the contingent workmen are engaged, their contract of employment is not renewed and it does not amount to retrenchment. The regular workmen who have an All India Service liability and who were on tour to the temporary industrial establishments are either brought back to their respective Area Head Quarters or are shifted to other places in the country. The contingent employees cannot be shifted to other temporary industrial establishment for the reasons that they were specifically engaged for a particular temporary industrial establishment. At other temporary industrial establishments, The Corporation is obliged to engage local workmen for unskilled nature of work. Thus every project is an independent temporary industrial establishment and the Project Manager is the appointing and disciplinary authority for the contingent temporary workmen. The Respondent has taken Licence under the Contract Labour (R & A) Act, 1970 and starting engaging the unskilled workmen on contract basis for specific period with option to renew the contract. Hence the termination of the services of the unskilled workmen does not amount to retrenchment in view of Section 2(oo)(bb) of the Act. The Singareni Collieries Company Limited entrusted the exploratory drilling work to the Respondent Corporation in Kaghaznagar Coal Belt Area on promotional basis. For the purpose of carrying out the said assigned work, the Respondent opened a temporary industrial establishment at Kaghaznagar on 5-7-1990. The necessary Licence under Contract Labour (R & A) Act, 1970 was also obtained by the Respondent. Besides the regular employees who were deployed on tour of the temporary industrial establishment at Kaghaznagar Project from Area Headquarters, 58 local contingent workmen, including the petitioners were engaged under specific contracts of employment for unskilled nature of work. The appointment of these petitioners as contingent workmen was very specific and it was stipulated in the appointment orders that the contract of employment will terminate on a specific date, and it can be renewed for a further specific period as per the exigency of work. It was also further stipulated that in case the terms and conditions of the appointments are acceptable, the petitioners workman should report along with their acceptance letters. All the petitioners have duly conveyed their acceptance to the terms and conditions incorporated

for the appointment and reported for duty. The contract of employment of these workmen was renewed from time to time by issue of specific orders and the last of the employment contract was renewed upto 30-6-1993. As no work was left for contingent workman, their contract of employment was not renewed beyond 30-6-1993. Hence there is no retrenchment within the meaning of Section 2(oo). It is only termination of the services of the workmen as a result of non-renewal of contract of employment between the employer and the workmen concerned at its expiry in terms of the contract, falling within the meaning of Section 2(oo)(bb) of the Act. Therefore the provisions of Section 25-F of the Act need not be complied with. The formality of calling for the applicants through Employment Exchange was only to avoid arbitrariness in the selection of candidates and also in view of Clause III of 3rd Wage Settlement. From this, it cannot be presumed that it is a permanent appointment. The continuance of workmen for 2-1/2 years does not lead to an inference that it is a permanent appointment when the project work is closed. There was no further work for the contingent workmen. The Hon'ble High Court of Andhra Pradesh in its judgement dated 23-3-1992 in W.F. No. 10764 of 1988 and W.F. No. 19584 of 1988 upheld the Managements contention that each project is an independent temporary establishment. The work of each project is distinct and there may be execution of projects simultaneously at various places. There is also no guarantee that after completion of one project, there will be another new project awaiting execution. Hence there is no scope for contingent workmen being transferred to other projects when the project in one area is completed. The allegation that the retrenchment of the Petitioners is vitiated by mala fides and that it amounts to unfair labour practice is untenable and baseless. During 1993-94 as against the total projected workload of 3,00,000 metres of drilling the actual work entrusted was reduced to 1,47,000 metres drilling, and this drastic reduction in the workload has rendered 50 per cent of men and machinery idle and consequently there is depletion of income. The work in the project in which the petitioners-workmen were employed was completed and there is no further work to reinstate them. The petitioner's contract of employment came to an end by 30-6-1993 due to non-renewal of contract of employment and therefore, they are not entitled for reinstatement together with back wages as prayed for.

6. On behalf of the Petitioners W.W.1 is examined and documents Exs. W1 to W57 are marked. K. Srihari, workman in I.D. No. 28 of 1994 is examined as W.W.1 and he deposed to the averments in the claim statements. On behalf of the Respondent-Management M.W.1 is examined and Exs. M1 to M50 are marked. The Project Manager of the Respondent Corporation is examined as M.W.1 and he deposed to the averments in the counters. The details of the documents Exs. W1 to W57 and M1 to M50 marked on behalf of the Petitioner and the Respondent are appended to this Award.

7. The points that arise for consideration are as follows :

- (1) Whether the Petitioners-workmen in all these references were retrenched in violation of Section 25-F of the I.D. Act as alleged by them ?
- (2) To what relief the petitioners-workmen are entitled ?

8. POINT (1) :—The admitted facts as revealed from the evidence on record are as follows :—

The Respondent-Corporation i.e. Mineral Exploration Corporation Limited is a public sector undertaking engaged in the exploration of mineral resources in the country and it primarily executes work on behalf of the Government of India and assignments offered by the sister public sector undertakings of Central and State Government. It employs two different and distinct categories of workman, namely, (1) regular permanent workmen who are highly skilled technical staff, (2) temporary contingent unskilled workmen who are being engaged for unskilled work on specific contract of employment. During the year 1990 exploration drilling work was awarded to the Respondent-Corporation in Khagaznagar Coal Belt on promotional basis by the Singareni Collieries Company Limited. For the purpose of carrying out the said assigned work, the respondent opened a temporary industrial establishment at Khagaznagar on 5-7-1990. For carrying out that work, the Respondent-Corporation deployed some of its permanent regular employees from area Headquarters and also engaged 58 local contingent unskilled workmen at the temporary industrial establishment at Khagaznagar. The workmen under these references are some of those local contingent unskilled workmen engaged by the Respondent Corporation. It is also admitted that after completion of the work at Khagaznagar, the services of all the 58 contingent unskilled workmen including the petitioners under these references were terminated w.e.f. 30-6-1993 as no work was left out for them in that establishment. It is also not disputed that the workmen under these reference come within the definition of 'workmen' as defined under Section 2(e) of the Act. It is also not disputed that these petitioners were engaged on specific contract of employment. Exs. W1 to W12 are the appointment orders of the petitioners in I.D. Nos. 28, 24, 23, 22, 21, 19, 18, 31, 17, 15, 26, 27 of 1994 respectively and Exs. W43, W46, W50 and W53 are the appointment orders of the workman in I.D. Nos. 20, 25, 29 and 30 of 1994 respectively. It is not disputed that the Petitioners in I.D. Nos. 16, 32 and 86 of 1994 were also issued similar appointment orders engaging them as contingent unskilled workmen in the Respondent-Corporation. As seen from these documents the petitioners were offered the work on two conditions : firstly, that the appointment will be purely on contingent temporary basis and the contract of employment will be terminated on 31-7-1991 or on completion of work whichever is earlier and the contract of employment will be renewed for further specific period if deemed fit as per exigency of work by issue of a specific order. Secondly the appointee will have to perform any of the job unskilled category which will be assigned to him from time to time. They were also directed to submit the acceptance letters if they agree for the above said terms and conditions. It is

not disputed that the Petitioners herein have accepted the above said terms and conditions of appointment and issued their acceptance letters Exs. M1 to M19. Under Exs. W1 to W12, W43, W46, W50 and W53 the contract of employment was only upto 31-7-1991 and the contract of employment was renewed upto 31-12-1991 under Exs. M20 to M38. Under Ex. M39 the contract of employment was renewed upto 31-3-1992. Under Ex. M40 it was renewed upto 30-6-1992. Under Ex. M41 it was renewed upto 30-9-1992. Under Ex. M42 it was renewed upto 31-3-1993 and under Ex. M43 the contract of employment of these petitioners was renewed upto 30-6-1993. The contract of employment of these petitioners was not renewed further subsequent to 30-6-1993 and their services were terminated w.e.f. 30-6-1993. The termination notice Exs. W13 to W22, W48, W52 and W56 were also issued to these terminated workmen. Terminal benefits were also paid under Exs. W23 to W32 and W47, Exs. W33 to W42, W45, W51, W54 and W55 are the service certificate issued to the terminated workmen. Ex. M44 is the office copy of the termination notice dt. 21-6-1993 issued to these petitioners stating that their contract of employment will not be renewed after its expiry on 30-6-1993. Ex. M45 is the notice dated 30-6-1993 issued to these petitioners informing that the terminal benefits will be paid to them on 1-7-1993. Ex. M46 is the statement showing the payment of terminal and other benefits to all these petitioners and other workmen whose services were terminated on 30-6-1993. It is also not disputed that these petitioners received the said terminal and other benefits as shown under Ex. M46. Thus the petitioners workmen were terminated from service w.e.f. 30-6-1993 by the Respondent Corporation.

The learned counsel for the Petitioners submits that the petitioners were retrenched in violation of provisions of Section 25-F of the I.D. Act and as such the retrenchment of these petitioners is null and void and that they are entitled for reinstatement with back wages and other attendant benefits. The learned counsel for the Respondent Corporation on the other hand, contends that the termination of these petitioners does not amount to retrenchment and that their services were terminated on account of non-renewal of their contract of employment under Section 2(o) (bb) of the I.D. Act and as such the petitioners herein are not entitled for reinstatement, back wages etc. as claimed by the Petitioners. Hence it has to be seen whether the termination of these petitioners from service w.e.f. 30-6-1993 amounts to retrenchment.

10. Section 2(o) of the I.D. Act defines retrenchment as follows :

“Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman, or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and

the workman concerned contains a stipulation in that behalf;

(bb) termination of the service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.”

Section 25-F of the I.D. Act prescribes the conditions precedent to retrenchment of a workman and it reads as follows :

“No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period; or notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay or every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

11. It is not disputed that the Petitioners herein were engaged as contingent unskilled workmen to work at Khagaznagar Project of the Respondent-Corporation. They worked for more than 2-1/2 years and their services were terminated w.e.f. 30-6-1993. M.W1 the Project Manager of the Respondent Corporation also admits the said factum of engagement of these petitioners as contingent unskilled workmen till their services were terminated w.e.f. 30-6-1993. It is well settled that the definition of 'retrenchment' in Section 2(oo) of the I.D. Act is comprehensive one intended to cover any action of the Management to put an end of employment of an employee for any reasons whatsoever except if the case falls within any of the excepted categories under that Section i.e. (1) termination by way of punishment inflicted pursuant to the disciplinary action (2) voluntary retirement of the workman, (3) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf, (4) termination of the service of a workman as a result of the non-renewal of contract of employment between the employer and the workman concerned on its expiry, (5) the termination of contract of employment in terms of stipulation contained in the contract of employment, or (6) termination of the service of a workman on the ground of continued ill-health. Once the case

does not fall in any of those excepted categories the termination of service would be retrenchment within the expression of Section 2(oo) of the Act vide *D. K. Yadav v. IMA Industries Ltd.*, (1995) (5) (Supreme Court Cases page 259), *L. Robert D Souza v. Executive Engineer Southern Railway & Anr.* (AIR 1982 S.C. page 9854), *Oriental Bank of Commerce v. Presiding Officer, Central Government Industrial Tribunal Anr.*, (1994) (11) LLJ page 770 Rajasthan).

12. The learned counsel for the Respondent submits that in the instant case the services of these petitioners were terminated on account of non-renewal of contract of employment on its expiry and as such it does not amount to retrenchment under Section 2(oo) (bb) of the I.D. Act. There is much force in this contention. Sub-Clause (bb) of Section 2(oo) of the I.D. Act has been inserted by the Amending Act 49 of 1984. Its effect is to exclude from the ambit of definition of retrenchment, (1) termination of the service of a workman as a result of non-renewal of contract of employment between the employer and the workman concerned on its expiry and (2) the termination of contract of employment in terms of stipulation contained in such contract of employment. The expression "such contract" in the second part of the clause refers to "contract of employment between the employer and the workman concerned". In other words if there is a stipulation of contract of employment between the employer and the workman concerned providing the mode and manner of termination of service, such termination of service has now specifically been excepted from the ambit of definition of retrenchment by this sub-clause. In the instant case the termination of the petitioners has been affected under Clause (i) of Sub-Clause (bb) of Section 2(oo) of the I.D. Act i.e., the termination of the services has been affected as a result of non-renewal of contract of employment between the petitioners and the Respondent. As earlier stated under separate contracts of employment, Exs. W1 to W12, W43, W46, W50 and W53, these petitioners were engaged for a specific period, i.e. upto 31-7-1991. Under Exs. M20 to M30 these contracts of employment were renewed upto 31-12-1991. Under Ex. M39 their contracts of employment were renewed upto 31-3-1992. Again under Ex. M40 it was renewed upto 30-6-1992. Under Ex. M41 was renewed upto 30-9-1992. Under Ex. M42 it was renewed upto 31-3-1993 and finally under Ex. M43 the contracts of employment were renewed upto 30-6-1993. Under Ex. M44 these petitioners workmen were informed by the Respondent that their contracts of employment would not be renewed beyond 30-6-1993 and under Ex. M45 the petitioners were asked to collect their terminal and other benefits on 1-7-1993 and their terminal benefits were also paid as seen from Ex. M46. It is clear from these documents that the contracts of employment of these petitioners were renewed from time to time upto 30-6-1993 and therefore the contracts of employment were not renewed and thus their services were terminated on account of non-renewal of contracts of employment. Therefore the termination of the services of these petitioners on account of non-renewal of contracts of employment comes within the exempted categories under Section 2(oo) of the Act and as such the termination of these petitioners is not retrenchment under the definition of Section 2(oo) of the Act.

13. The learned counsel for the Petitioners relied upon the decision in *Gammon India Limited v. Niranjan Dass*, 1983 Lab I.C. page 1865). *Hari Mohan Rastogi v. Labour Court and Anr.* (1983 Lab. IC page 1906) and also *The Management of Karnataka State Road Transport Corporation, Bangalore v. M. Boraiah and Anr.* (1934) (48) FLR page 89). These decisions relate to the law prevailing prior to the introduction of Sub-Clause (bb) of Section 2(oo) by the Amending Act 49 of 1984 which came into force w.e.f. 18-8-1984 and as such they are not relevant for the purpose of these cases.

14. The learned counsel for the Petitioners also relied on the decision in *R. Srinivas Rao v. Labour Court, Hyderabad* (1990 (1) A.W.R., page 428). In this case the workers were initially engaged under orders of appointing for some period and after expiry of that period they were continuously engaged as casual labour on daily wages without renewal of contract of employment till the date of their termination. Under these circumstances his Lordship held in para 25 thus :—

“The main part of Section 2(oo) speaks of termination ‘for any reason’ as amounting to retrenchment in the absence of clear intention, the first part of Sub-Clause (bb) cannot be interpreted to take the termination of the services of the casual labour on daily wages. In my view per se termination of casual labour on daily wages is clearly outside the first part of Sub-Clause (bb) of Section 2(oo) and was never intended to be included from the definition of ‘retrenchment’.”

In the same para his Lordship further observed thus:

“The ‘Contract of employment’ contemplated therein is, in my view, referable to contracts other than engagement as casual labour on daily wages.”

The facts in that case can be distinguished from the facts in this case. In that case though the workers were engaged under contract of employment for a specific period, but subsequently it was not renewed or terminated but the said workers were allowed to work as contingent casual labour on daily wages. Therefore, his Lordship held the termination of casual labour on daily wages does not come within the excepted Sub-Clause (bb) of Section 2(oo) as there was no contract of employment which could not be renewed. In the instant case the contract of employment is there throughout. As earlier stated in the last order under Ex. M43 the contract of employment was renewed upto 30-6-1993. Thereafter it was not renewed and therefore, the services of the petitioners were terminated. Hence the decision cited by the learned counsel for the petitioners does not apply to the facts in this case. The decisions in (i) *Girish Kumar Jain vs. Union of India and others* 1994 (69) FLR 31; (ii) *Mahendra Kumar Sharma vs. Union of India and others* 1994(69) FLR 220, cited by the learned counsel for the petitioners are equally not applicable to the facts in these cases for the reasons stated above.

15. The learned counsel for the Petitioners also relied on the decision in *Jayabharat Printers and*

Publishers P. Ltd. v. Labour Court, Koshikode and Another [1993 (67) FLR page 757 Kerala High Court] and *Chief Administrator, Haryana Urban Development Authority and Anr. v. Industrial Tribunal, Rohtak and Anr.* [1994 (16) FLR page 35 Punjab and Haryana High Court]. The facts in this case are also different from the facts in the instant case. In those cases, it is no doubt true that the workmen were employed on a contract of employment and their services were terminated on the expiry of that contract, but they were re-employed each time after a gap of few days. Under those circumstances, their Lordships held that the job had continued but the periodical appointments were made to avoid regular status to the employees and therefore, it was held that the exception under Sub Clause (bb) of Section 2(oo) cannot be extended to such cases. Their Lordships also held that Section 2(oo)(bb) of the Act has to be strictly interpreted and it is necessary to find out whether the letter of appointment is a camouflage to circumvent the provisions of the Industrial Disputes Act. In the instant case, there is nothing on record to show that the letters of renewals under Exs. M20 to M43 are only a camouflage to circumvent the provisions of the I. D. Act. In fact they are not the re-appointments of these petitioners. Even before the expiry of the earlier orders of appointment, the services of these petitioners were renewed from time to time till such time when their services were no longer required as the Project work undertaken was completed and as there was no work to be attended to by these petitioners. It is not disputed that the work entrusted to temporary industrial establishment of the Respondent at Khagaznagar was completed by 30-6-1993 and as such there was no work to be entrusted to the petitioners herein after 30-6-1993. Hence their contracts of employment were not renewed any further beyond that date and therefore, their services were terminated. Hence those citations relied on by the learned counsel for the petitioners have no application to the facts in these cases.

16. In the light of my above discussion, I hold on Point (1) that the termination of these petitioners does not amount to retrenchment under Section 2(oo) of the I. D. Act and therefore, the provisions under Section 25-F of the I. D. Act need not be complied with before terminating the services of the petitioners. Thus the point is decided in favour of the Respondent-Corporation and against the petitioners.

17. Point (2).—This point relates to the relief to be granted to the petitioners under these references. In view of my finding on Point (1) that the termination of the petitioners does not amount to retrenchment and that provisions of Section 25-F of the I. D. Act need not be complied with before terminating the services of the petitioners, they are not entitled for any relief under these references.

18. In the result, Award is passed stating that the action of the Respondent-Corporation in terminating the services of the petitioners under all these references is just and legal and that the petitioners are not entitled for any relief in these references. The parties are directed to bear their costs.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 23rd day of September, 1995.

A. HANUMANTHU, Industrial Tribunal

Appendix of Evidence.

Witnesses Examined for

Petitioners-Workmen :

W. W1—K. Srihari.

Witnesses Examined for

Respondent-Management :

M. W1—V. L. Mallikarjuna.

Documents marked for the Petitioners-Workmen :

- Ex. W1 7-1-91—Appointment order issued to W. W1.
- Ex. W2 to Ex. W12—Appointment orders of the other workmen in other industrial disputes.
- Ex. W13 to W32—Terminal benefits letter given to the workmen.
- Ex. W33 to W42—Service Certificate issued to the workmen by the Respondent.
- Ex. W43 by consent.—Appointment Order dated 7-1-91 of D. Vasantha Rao.
- Ex. W44 by consent.—Wage slip of D. Vasantha Rao.
- Ex. W45 by consent.—Service Certificate of D. Vasantha Rao, dated 30-6-93.
- Ex. W46 by consent.—Appointment order dated 20-1-1991 of T. Lachiah.
- Ex. W47 by consent.—Service Certificate of T. Lachiah dated 30-6-93.
- Ex. W48 by consent.—Termination Notice dated 1-7-93 to T. Lachiah.
- Ex. W49 by consent.—Annexure-IV, dated 1-8-1991 contract of employment of Sri P. Shankar.
- Ex. W50 -do- —Appointment order dated 20-1-1991 of T. Krishna.
- Ex. W51 -do- —Service Certificate dated 30-6-93 of T. Krishna.
- Ex. W52 -do- —Termination Notice dated 1-7-93 of T. Krishna.
- Ex. W53 -do- —Appointment order dated 7-1-1991 of P. Ramu.
- Ex. W54 -do- —Service Certificate of P. Ramu dated 30-6-1993.

Ex. W55 -do- —Service Certificate dated 30-6-93 of B. D. Sarkar.

Ex. W56 -do- —Termination Notice dated 1-7-93 of B. D. Sarkar.

Ex. W57 1-12-1990—Interview for the post of Unskilled Labour addressed to P. Peddi Raju.

Documents marked for the Respondent-Management:

- Ex. M1 to M19—Acceptance letters of the Petitioners.
- Ex. M20 to M38—Contract of employment renewed upto 31-12-1991.
- Ex. M39 .. —Contract of employment renewed upto 31-3-1992.
- Ex. M40 .. —Contract of employment renewed upto 30-6-1992.
- Ex. M41 .. —Contract of employment renewed upto 30-9-1992.
- Ex. M42 .. —Contract of employment renewed upto 31-3-1993.
- Ex. 43 ... —Contract of employment renewed upto 31-6-1993.
- Ex. M44 .. —Office copy of termination notice dated 21-6-1993.
- Ex. M45 30-6-93—Notice dated 30-6-1993 issued to petitioners informing that terminal benefits will be paid to them on 1-7-1993.
- Ex. M46 —Statement of payment of terminal benefits.
- Ex. M47 .. —Judgement copy in W.P. No. 10764/88 and 19584/88.
- Ex. M48 .. —Xerox copy of Award of Chit Jabalpur case in No. CGI T/LC(R) (16)/1974.
- Ex. M49 .. —Xerox copy of extract of 3rd Wage Settlement.
- Ex. M50 .. —Xerox copy of extract of Standing Orders.

नई दिल्ली, 15 फरवरी, 2002

का.आ. 832— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल वेअरहाऊसिंग कॉर्पो. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 58/2001 को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-02-2002 को प्राप्त हुआ था।

[सं.एल.-42011/1/2001-आई.आर. (एम.)]

वी.एम.] डेविडे, अपर सचिव

New Delhi, the 15th February, 2002

S.O. 832.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Warehousing Corpn. and their workman, which was received by the Central Government on 14-2-2002.

[No. L-42011/1/2001-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer

Reference No. CGIT-58/2001

Central Warehousing Corporation.

AND

Shri S. S. Sharma.

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute for adjudication vide Order No. L-42011/1/2001-IR(M) dated, 10-8-2001 on the following schedule :

SCHEDULE

"Whether the Memo dated 16-3-2000 of Regional Office, Central Warehousing Corporation, Bhopal directing Shri S. S. Sharma, Warehouse Assistant Gr. I, Central Warehouse, Raipur-III to apply for earned leave for the period from 3-12-98 to 15-1-99 is justified? If not, to what relief Sharma is entitled?"

This reference has been made on this issue in dispute that S. S. Sharma, Assistant Gr. I, Central Warehouse, Raipur did not apply for earned leave and whether the action of management directing him to apply for earned leave from 3-12-98 to 15-1-99 is justified?

The workman S. S. Sharma did not appear in this Court to file Statement of Claim. On 5-11-2001 Kishan Chourasiya, Maha Sachiv of C. W. C. Workers's Union, Raipur appeared to contest the case for the workman and moved application for granting him time to submit Statement of Claim. He was allowed to submit Statement of Claim on 18-12-2001 as prayed by him.

But on 18-12-2001 neither the workman S. S. Sharma turned up in the Court nor his union representative Kishan Chourasiya submitted Statement of Claim for the workman. The case was again adjourned to 8-1-2002 for filing Statement of Claim by the workman.

Today i.e. 8-1-2002 also workman S. S. Sharma, Assistant Gr. I did not appear in the Court to submit the Statement of Claim. His union representative Kishan Chourasiya also did not file any Statement of Claim for the workman.

Shri R. R. Sharma, Superintendent of Central Warehouse Corporation is representing the management. He is present. He was heard On 5-11-2001 the Regional Manager, Central Warehouse Corporation has submitted application along with documents regarding the facts of this case.

Shri R. R. Sharma, the representative of the management represented that the workman Shri S. S. Sharma was transferred from Raipur Central Warehouse, Unit No. I to Central Warehouse, Balakhat vide transfer order dated 28-11-98 on administrative ground. Shri S. S. Sharma did not join duty at Central Warehouse, Balakhat.

On his representation he was again transferred from Central Warehouse, Balakhat to Construction Cell, Raipur vide order dated 22-12-98

The Executive Engineer of Construction Cell was not willing to accept Shri S. S. Sharma in his Cell and he was then again transferred from Construction Cell Unit, Raipur to Central Warehouse, Unit No. III at Raipur.

The transfer order from Construction Cell Unit to Central Warehouse Unit No. III was passed on 6-1-99. Shri S. S. Sharma, workman then joined office at Central Warehouse, Raipur Unit No. III on 15-1-99.

The above facts show that the department was taking an extremely lenient view in accommodating S. S. Sharma, the workman and had adjusting him to the place of his choice at Raipur. Probably due to such lenient action the workman has dared to avoid the compliance of orders of the management and had not joined duty at Central Warehouse, Balakhat on his transfer.

Management should have taken strong administrative action against such official who had been avoiding to comply with the orders of his superiors.

The workman has not turned up in this Court also to submit Statement of Claim either himself or through his union representative.

In the above circumstances the workman is not entitled to any relief claimed by him.

ORDER

In view of the circumstances discussed above, the action of the Regional Office, Central Warehouse Corporation, Bhopal directing Shri S. S. Sharma, Warehouse Assistant Gr. I, Central Warehouse, Raipur-III to apply for earned leave from 3-12-98 to 15-1-99 is justified.

Shri S. S. Sharma is not entitled to any relief claimed by him.

The reference is disposed of accordingly.
Dated : 8-1-2002.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ. 833.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दालको इंडस्ट्रीज लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद के पंचाट (संदर्भ संख्या 12/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-02-2002 को प्राप्त हुआ था।

[सं.एल.-43011/5/94-आई.आर. (विविध)]
बी.एम. डेविड, अवर सचिव

New Delhi, the 15th February, 2002

S.O. 833.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/1995) of the Central Government Industrial Tribunal Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of HINDALCO Ind. Ltd. and their workman which was received by the Government on 14-2-2002.

[No. L-43011/5/94-IR(M)]
B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Sec. 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 12 of 1995

PARTIES :

Employers in relation to the management of Rudnipet Bauxite Mine of HINDALCO Industries Ltd.

AND

Their Workmen

PRESENT :

Shri S. H. Kazmi, Presiding Officer.

APPEARANCES :

For the Employers : Shri G. Prasad, Advocate.

For the Workmen : Shri H. S. Haque, President, Chotanagpur Bauxite Works Union.

STATE : Jharkhand : INDUSTRY : Bauxite Mine.

Dated, the 21st January, 2002

AWARD

By Order No. L-43011/5/94-I.R. (Misc.) dated 12-1-95 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by

clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the management of Rudnipet Bauxite Mine of M.s. HINDALCO Industries Ltd., Lohardaga is justified in declaring lay off w.e.f. 14-7-93 vide letter dated 14-7-93 and closing of Rudnipet Bauxite Mine w.e.f. 19-8-93 applying for permission on 18-8-93 and also terminating the services of 99 workmen (list enclosed) by paying them compensation as per the provisions of the I.D. Act instead of full compensation? If not, to what relief the workmen are entitled?”

2. A memorandum of settlement has been filed duly signed the representatives of the sponsoring union and the management respectively. I have gone through the settlement and in my opinion the settlement is fair and proper which has already been accepted by the parties.

3. Accordingly, I render an award on the basis of the settlement petition which shall form part of the award.

S. H. KAZMI, Presiding Officer

MEMORANDUM OF SETTLEMENT BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I DHANBAD

Reference No. 12/1995

Employers's in relation to the Management of M/s. HINDALCO Industries Limited, Lohardaga.

AND

Their Workmen

The humble joint petition of compromise on behalf of the Parties most respectfully sheweth:—

That, both the parties have amicably resolved the issue out side the Court. The Union is not going to pursue the intended matter. Therefore, no dispute exist.

It is, therefore prayed that your honour may please pass a no dispute award for which we shall ever pray.

For Workmen :

Sd/-

Shri Shiv Prasad Sahu
General Secretary,
C.B.W. Union

Sd/-

Shri Mallick Serajul Haque
President,
C.B.W. Union.
For the Employer

Sd/-

(A. S. Tomar)
General Manager (P&A)
Witness—

Sd/-

Shri Rakesh Ranjan
Personnel Officer

Part of the Award

नई दिल्ली, 11 फरवरी, 2002

का.आ. 834.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, मुम्बई के पंचाट (संदर्भ संख्या 2/81 ऑफ 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-02-2002 को प्राप्त हुआ था।

[सं.एल.-12012/70/2000-आई.आर. (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 11th February, 2002

S.O. 834.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/81 of 2000) of the Central Government Industrial Tribunal-cum-LC No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 8-2-2002.

[No. L-12012/70/2000-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI PRESENT :

S. N. Saundankar, Presiding Officer

Reference No. CGIT-2/81, of 2000

Employers in relation to the management of Syndicate Bank.

The Deputy-Gen. Manager,
SB, Zonal Office, Maker Tower,
No. E, 2nd Floor, Plot No. 85,
Cuffee Parade, Colaba
Mumbai-400 005.

AND

Their Workmen

Smt. Savitri N. Shenoy,
10, Hind Nivas, Society Road,
Jogeshwari (E),
Mumbai-400 060.

APPEARANCES :

For the Employer : Mr. S. R. Kadam Advocate.

For the Workmen : Mr. R. D. Bhat Advocate.

Mumbai, Dated 3rd January, 2002

AWARD—PART-I

The Government of India, Ministry of Labour by its Order No. L-12012/70/2000/IR(B-II), dated, 604 GI/2002-9

24-8-2000, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this tribunal for adjudication.

“Whether the action of the management of Syndicate Bank in dismissing Smt. Savitri N. Shenoy is justified and proper? If not, then what relief the workman is entitled to?”

2. Workman, Smt. Savitri N. Shenoy, joined the Syndicate Bank in 1965, and about 21 years she worked as Special Assistant. At the time of dismissal she was working in Jogeshwari Branch. Vide Statement of Claim, Smt. Shenoy contended that the bank by show cause memo dtd. 16-10-1996, demanded her explanation on the transaction of loan, against deposits (LD) in respect of FCNR Deposit A/c. i.e. LD 111/94 dtd. 12-3-94 for Rs. 13 Lacs and second regarding LD 143/94 dtd. 12-4-94 for Rs. 15 Lacs which explanation she gave on 28-11-96. However dis-satisfied with that, the management gave charge-sheet dtd. 4-4-97 alleging that the workman failed to follow the guidelines pertaining to arrangement of LD's while supervising Loan Deposit Account No. 111/94 dtd. 12-3-94 for Rs. 13 Lacs in the name of Mr. Mandia S. J., and thereby she committed misconduct as per clause-19.5 (j) of Bipartite Settlement. It is her contention that the said loan was sanctioned by the then Branch Manager, Mr. Pai and that there was a mere procedural irregularity on her part and there was no loss to the bank but in spite of that domestic inquiry was held by the bank against her of which Mr. M. J. Prasad was the inquiry Officer and Mr. B. S. Acharya the Presenting Officer and that workman was represented by Mr. Karkera as Defence Representative. It is the contention of workman that she had prayed to adjourn the inquiry on 23-9-97, however, that was declined, she had requested, to examine B. V. Pai the then Branch Manager, for management but he was not examined thereby prejudice was caused which vitiates the inquiry. It is her further contention that she was not given copies of all the documents relied and that inquiry was concluded on 11-4-98. It is contended that though inquiry officer observed that there was no misconduct on her part, went on to state that she was expected to perform the duties to ensure the credit pertaining to LD 111/94, though there was no such allegation whatsoever in the chargesheet and that without any basis she gave finding that workman committed gross misconduct, prejudicial to the bank which is entirely perverse. It is contended the Disciplinary Authority on the basis of the findings of the inquiry officer, dismissed her from service by order dtd. 23-7-98 which was appeared. However the same came to be dismissed on 10-3-99. Therefore, it is contended the inquiry being against the Principles of Natural Justice and the findings being perverse, needs to be set aside.

3. Management, resisted the claim of workman by filing Written Statement (Exhibit-8) contending that the workman was charged for gross misconduct which during the inquiry, inquiry officer found proved therefore the order of dismissal, is proper. It is contended that if workman felt in particular as a material witness she could have examined Pai as her witness, but failed. It is contended that on verification of record

it is found that workman was responsible for arranging LD 111/94 dt. 12-3-94 for Rs. 13 Lacs in the name of Shri Maradia, thereby she exposed the bank to the risk of financial loss by facilitating arrangement of fraudulent LD. It is contended inquiry being proper and the findings not perverse, cannot be set aside, consequently prayed to reject the claim of workman.

4. The workman by the Rejoinder (Exhibit-9) reiterated the recitals in the Statement of Claim denying the contentions in the Written Statement. On the basis of the rival pleadings, issues were framed at Exhibit-13. Workman Ms. Shenoy filed affidavit by way of Examination-in-Chief (Exhibit-18) and closed evidence vide purshis (Exhibit-47). Presenting Officer Mr. B. S. Acharya, filed affidavit on behalf of the management by way of Examination-in-Chief (Exhibit-49) and the management closed evidence vide purshis (Exhibit-50).

5. Workman filed written submissions (Exhibit-51) and the management at (Exhibit-52). On perusing the record as a whole and the written submission, I record my findings on the following preliminary issues for the reasons mentioned below:—

Issues	Findings
1. Whether the inquiry conducted against the workman was as per the principles of Natural Justice?	No.
2. Whether the findings of the inquiry officer are perverse?	Yes.

REASONS

6. Admittedly workman Ms. Shenoy was working as a Special Assistant in the year 1996 at Jogeshwari Branch. According to her, inquiry conducted by the management against her, vitiates as she was not given sufficient time, she was not supplied copies of the documents relied by the management during the inquiry. So far not giving sufficient time is concerned, the inquiry, report dt. 11-4-98 (Exhibit-35) shows enquiry was held only on 23-9-97 and 21-1-98 and that the findings were recorded by the inquiry officer on 11-4-98. It is seen from the record the workman had requested the inquiry officer to give time so as to enable her to take up the matter by the union with the management which point was under consideration of the management itself, alongwith the case of five officers, two special assistants and twelve clerks, who were chargesheeted including the then Branch Manager. Since the inquiry was concluded on 11-4-98 the inquiry officer could have given her time to move through the union, but failed.

7. So far supply of copies of the relevant documents is concerned, Presenting Officer, Mr. Acharya admitted in his cross-examination, para-9 that except document, Debit slip (DG-28) marked as Exhibit-4 (on record with Exhibit-30) no documents relied by the management, were made available at the time of inquiry, though demanded by workman. According to workman had she given the documents, she could have pointed out as to how the then Branch Manager, Mr. Pai had acted mala fide. Copies of documents on which the manage-

ment relied not supplied is clearly infraction of the Principles of Natural Justice and fair play and thereby the inquiry vitiates, for which a reliance can be bad to CST Mumbai Vs. Rajan Kumar Mohalik 2000 III CLR 117. The Learned Counsel for the workman by written submissions (Exhibit-51) pointed out that not only inquiry vitiates, but, the findings recorded by the inquiry officer are totally perverse. 'Perversity' is that where the findings are such which no reasonable person would have arrived at on the basis of the material before him. In the case on hand, the Presenting Officer, Mr. Acharya in his cross-examination admits that workman was not chargesheeted dt. 4-4-97 (Exhibit-33) for not ensuring credit pertaining to the LD 111/94, nor for failing to discharge judiciously and acted in a manner unbecoming of a bank employee. However, on plain reading of the report (Exhibit-35), it is seen enquiry officer observed the delinquent workman was negligent by keeping quiet about the relevant contra credit, of a huge amount simply initialling on the debit slip, which was not the charge. It is further to be noted that the inquiry officer in his report, para. 5 while assessing the evidence led before him point out the, delinquent workman was kept in dark about the credit voucher and that the then Branch Manager was responsible and that workman was not aware of the account to which the credit was accorded and despite this he concluded the workman committed a misconduct. This finding is not based on the record and even by way of analysis, therefore, can safely said to be perverse. Therefore considering the record as a whole the inquiry conducted against the workman can be said to be against the Principles of Natural Justice and fair play and that the findings of the inquiry officer, are perverse. Issues are therefore, answered accordingly and hence the order:—

ORDER

The domestic inquiry conducted against the workman was not as per the Principles of Natural Justice. The findings of the inquiry officer are perverse. Management to lead evidence to justify its action.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 11 फरवरी, 2002

का.आ. 835.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संवाद नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 16/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-02-2002 को प्राप्त हुआ था।

[सं. एल.—12011/156/99—आई.आर. (बी-II)]

अजय कुमार, डैम्क अधिकारी

New Delhi, the 11th February, 2002

S.O. 835.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award: (Ref. No. 16/2000) of the Central Government Industrial

Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 11-2-2002.

[No. L-12011/156/99-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT LUCKNOW

PRESENT :

RUDRESH KUMAR, Presiding Officer

I.D. No. 16/2000

Ref. No. L-12011/156/99/IR (B-II) dtd. 15-2-2000.

BETWEEN

The Vice President, Punjab National Bank Employees Congress, S-581, Yashoda Nagar, Kanpur.

AND

The Sr. Regional Manager, Punjab National Bank 59/29, Regarail Office, Birhana Road Kanpur.

AWARD

By order No. L-12011/156/99-IR(B-II) dated 15-2-2000, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-section (1) and Section 2(A) of I.D. Act, 1947 (14 of 1947) referred this industrial dispute between the Vice President, Punjab National Bank Employees Congress, Kanpur espousing cause of A. K. Verma and the Sr. Regional Manager, Punjab National Bank, Kanpur for adjudication.

The reference under adjudication is as under :

“Whether the action of the management of Punjab National Bank in imposing the punishment order, dated 6-1-1998 and 6-3-98 upon Shri A. K. Verma, is legal and justified? If not, what relief the workman is entitled to?”

2. The representative union, the Punjab National Bank Employees Congress, has espoused cause of Mr. A. K. Verma, its Vice President impugning action of its employer the Punjab National Bank, in imposing punishment orders dated 6-1-98 and 6-3-98. No punishment order was passed on 6-1-98, but a show cause notice after domestic enquiry was given. Punishment order actually was passed on 6-3-1998.

3. The brief facts of the case are; that the workman was served with a charge sheet dated 1-2-1994 for withdrawing on different dates a sum of Rs. 80,060 from an account of a deceased person fraudulently and further for destroying the relevant records/documents of the bank to hide his fraudulent activities. The acts on the part of the workman constituted “gross misconduct” under para 19.5(j) and (d)

of the Bipartite settlements. The workman was also placed under suspension for his aforesaid misconduct on 28-4-1993 but later, reinstated on 24-7-1995. He submitted reply to the charge sheet on 9-2-1994 which was not found satisfactory and the Disciplinary Authority by order dated 10-6-1994 ordered departmental enquiry to look into the truthfulness of the allegations as contained in the charge sheet dated 1-2-1994.

4. The Enquiry Officer conducted the enquiry as per provision of the Bipartite settlements, during which the workman was afforded reasonable and fair opportunity to defend himself. The Enquiry Officer submitted his report dated 31-3-1997 to the Disciplinary Authority holding that the charges against the workman not proved.

5. The Disciplinary Authority did not agree with the findings recorded by the Enquiry Officer in his report dated 31-3-1997, partly, in respect of charge no. 1 but concurred with findings of the Enquiry Officer in respect of charge no. 2. A show cause notice was issued to the workman by order dated 6-1-1998 which elaborated in detail the points of disagreement which is quoted here under :

“I do not agree with the findings and reasoning given by Enquiry Officer in respect of the allegations made in Charge No. 1, I find from the chargesheet dated 1-2-1994 that the Charge No. 1 essentially contains following three allegations :—

1. that he kept in his personal custody with fraudulent intention unused cheque leaves no. 165433 to 165450 surrendered by M/s. Swastik Garments in its Current A/c No. 986.
2. that he entered the aforesaid surrendered cheque leaves in the deceased Current A/c. no. 344 AND.
3. that he managed to withdraw on different dates sum of Rs. 80060 from the said deceased A/c by using the surrendered cheque leaves.”

I have carefully gone through the records of enquiry proceedings and documents exhibited during the course of enquiry and I am of the view that the allegations mentioned at Point No. 2 & 3 above of Charge No. 1 can be said to have been proved in the departmental enquiry. In respect of allegations that you had entered surrendered cheque leaves in deceased Current A/c. No. 344, I find that Shri S. C. Shukla, MW-1 at Page No. 36 of first enquiry register has deposed that the concerned Ledgersheet had been prepared and initialled by you. I further find that Sri P. C. Gupta, MW-6 at Page No. 16 of enquiry register no. 2 has deposed that the handwriting in exhibit P-11 is that of Sri Verma. In view of these depositions of MW-1 and MW-6, I am of the view that this part of the allegations in Charge No. 1 stands established.

6. By the said show cause-notice the Disciplinary Authority, proposed punishment bringing down to lower stage in the scale of pay by two stages as per

para 19.6 (c) of the Bipartite settlement'. The workman on receipt of this show cause notice dated 6-1-98 appeared before the Disciplinary Authority along-with his defence representative Mr. R. B. Tewari. He was given personal hearing. However, the Disciplinary Authority was not satisfied and did not find reasonable grounds to reconsider proposed punishment by his letter dated 6-1-1998. On 6-3-1998 the proposed punishment as above, was confirmed by Mr. R. P. Sharma, Sr. Regional Manager exercising power of the Disciplinary Authority.

7. In para 4 of the claim statement the workman also admitted that the domestic enquiry was fair and proper and the Enquiry Officer exonerated him of all charges by its findings dated 31-3-1997. In the claim statement, he extensively quoted from the recorded findings of the Enquiry Officer to prove his bonafides.

8. Since the punishment was inflicted after domestic enquiry, this Tribunal by its order dated 1-2-2001 framed two preliminary issues as follow :

- (i) Whether the domestic enquiry was fair and proper ?; and
- (ii) whether the findings of the Enquiry Officer is perverse and unsustainable in law ?

9. In the present adjudication, it is proved on admission of the parties that the domestic enquiry was fair and proper. The workman in his claim statement asserted so and the management also has not challenged fairness and propriety of the enquiry, as such, issue No. 1 does not need any discussion. As far as issue no. 2 is concerned the Disciplinary Authority disagreed with part of the conclusions. Because the management partly disagree with the findings, it cannot be taken that the findings were perverse. No averments have been made in the written statement of the management, that the findings are perverse. Hence this issue need not detain us any further.

10. It is submitted by the management that the Disciplinary Authority was not bound to accept findings of the Enquiry Officer and under law, had every right to disagree fully or partly. It is settled law that the Disciplinary Authority must specify points of disagreement and afford opportunity to the workman to explain such points. In this sequence, the show cause notice dated 6-1-1998 is required to be appreciated. This show cause notice proposing punishment elaborated points of disagreement with grounds which persuaded the Disciplinary Authority not to be satisfied with the findings. The Disciplinary Authority quoted extensively from the evidence of the witnesses recorded during enquiry and drew his own conclusion and disagreed with the findings on charge no. 1. Points of disagreement with adequate reasons have been given in the show cause notice dated 6-1-1998, which is not denied by the workman also. As such, the show cause notice dated 6-1-1998 was perfectly legal and within the competence of the Disciplinary Authority. This show cause notice afforded reasonable opportunity to the workman to explain points of disagreement and the workman with his defence representative during personal hearing tried his best to satisfy the Disciplinary Authority.

So, the workman was given full opportunity and there was no violation of the rule of natural justice.

11. The Disciplinary Authority after due consideration recorded his views that there was no need to interfere with the proposed punishment and confirmed the punishment by order dated 6-3-1998. A close scrutiny of the findings of the Enquiry Officer as well the point of disagreement and the final conclusion drawn by the Disciplinary Authority do not call for any interference.

12. Accordingly, award is against the workman. He is not entitled to any relief.

LUCKNOW

6-2-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 11 फरवरी, 2002

का.आ. 836.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 79/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-02-02 को प्राप्त हुआ था।

[सं.एल.-12011/81/2001-आई.आर. (बी-II)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 11th February, 2002

S.O. 836.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/2000) of the Industrial Tribunal, Ahmedabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of United Bank of India and their workman, which was received by the Central Government on 7-2-2002.

[No. L-12011/81/2000-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI Y. P. BHATT, PRESIDING OFFICER INDUSTRIAL TRIBUNAL CENTRAL, AHMEDABAD

Reference (ITC) No. 79 of 2000

ADJUDICATION

BETWEEN

United Bank of India

First party.

AND

The workmen employed under it. . . Second party

In the matter of rejecting the reimbursement of medical bill dated 23-1-1998 to Shri S. M. Bhavsar.

APPEARANCES :

None for the Second Party.

AWARD

By an Order No. L-12011/81/2000/IR(B-II) dated 31-7-2000, the Under Secretary, Ministry of Labour, Govt. of India, New Delhi has referred an industrial dispute between the above parties for adjudication as stated in the Schedule of above order u/s 10(1) of the Industrial Disputes Act, 1947 to this Tribunal.

Though the matter was fixed for hearing on various dates, the Second party failed to remain present before this Tribunal and, therefore, this Tribunal had to make several adjournments. However, in order to enable the Second party to remain present and file the statement of claim, the matter was fixed for hearing on 8-1-2002, but on this day also, neither the Second party himself nor his Representative remained present. From this, it is quite clear that the Second party is not interested to proceed with this matter. In the result, I pass the following order :—

ORDER

The Reference is dismissed for non prosecution and it is disposed of accordingly with no order as to costs.

Ahmedabad, 8th January, 2002.

Y. P. BHATT, Presiding Officer

नई दिल्ली, 11 फरवरी, 2002

का.आ. 837.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 25/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-02-2002 को प्राप्त हुआ था।

[सं. एल. - 12012/141/2000-आई.आर. (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 11th February, 2002

S.O. 837.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2001) of the Central Government Industrial Tribunal-cum-LC, Lucknow as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 8-2-2002.

[No. L-12012/141/2000-IR(B-II)]
AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
LUCKNOW

PRESENT :

Rudresh Kumar, Presiding Officer.

I. D. No. 25/2001

L.12012/141/2000/IR(B-II) dated 30-1-2001

BETWEEN

Hari Nath Singh, S/o Shri R. C. Singh R/o
525/369/3, Purana Mahanagar, Lucknow,
(U.P.)

AND

The Regional Manager, Dena Bank, 28-A,
Praveen House, Vidhan Sabha Marg,
Lucknow (U.P.)

AWARD

By Order No. L-12012/141/2000/IR(B-I) dated 30-1-2001, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of I.D. Act, 1947 (14 of 1947), referred this industrial dispute between Hari Nath Singh S/o Shri R. C. Singh and the Regional Manager, Dena Bank, Lucknow for adjudication.

The reference under adjudication is as under :

“Whether the action of Dena Bank in dismissing the services vide order dated 23-4-1997 of Hari Nath Singh was legal and justified? If not, what relief the workman is entitled to?”

2. Admittedly, the workman, Hari Nath Singh was working as Head Cashier at Nandan Mahal Road branch of Dena Bank at Lucknow since the year 1985. He, allegedly, during the period of his posting at the said branch, committed criminal breach of trust and was charge sheeted. The Asstt. General Manager of the said bank issued a charge sheet on 11-11-1995, which also contained his suspension order. A charge of misappropriation of Rs. 40,000 was levelled against the workman. Later, a criminal case under Section 420/408 IPC was got registered on 18-11-95 at P. S. Kotwali, Chowk, Lucknow. The workman was found to have further embezzled a huge amount. The workman was released on bail in crime No. 509/95 under Section 420/408 I.P.C. by judicial order dated 24-5-96. Two other charge sheets dated 14-5-96 and 13-8-96 were also issued against him, as during investigation, it came to notice that he had embezzled a sum of Rs. 3,47,800. According to workman, on receipt of the two subsequent charge sheets, he filed an application on 12-6-96 intimating management about his inability to submit reply in absence of relevant documents, and further that his reply to the charges would prejudice his case by disclosure of his defence. As such, he preferred not to reply the letter.

3. Sri Virendra Singh, Manager, Regional of the Dena Bank was appointed as Enquiry Officer to conduct disciplinary enquiry against the accused. The workman vide his letter dated 26-11-96 informed the Enquiry Officer showing his inability as any reply would have direct bearing on criminal charges against him. Again on 25-1-1997, the workman submitted an application before the Enquiry Officer inter-alia praying that in the circumstances of the case it would not be appropriate for him to disclose his defence which would adversely effect criminal proceeding against him on the same subject matter.

4. The domestic enquiry proceeded ignoring request of the workman and was concluded. A copy of the enquiry report was forwarded to him by letter dated 17-2-97. A show cause notice dated 12-4-97 was served on workman on 14-4-97, requiring him to show cause as to why he should not be dismissed from the service of the bank. In reply to the aforesaid notice, the workman submitted his reply by registered post on 23-4-97, stating that entire enquiry proceeding against him was conducted in utter violation of the provisions of law and principle of natural justice without considering his reply, the management of the bank, ultimately, dismissed him vide order dated 23-4-1997.

5. It is also pleaded by the workman in the claim statement that he had fully participated in the domestic enquiry yet he was not given full opportunity to defend himself, in as much as, he was given only two weeks time to reply of the show cause notice dated 12-4-97 served on him on 14-4-97. The dismissal order was passed on 23-4-97 i.e. before the expiry of stipulated time in the said notice. In doing so the management ignored judgement and direction of Hon'ble High Court in Writ Petition No. 7546 (S/S) of 1996. It is conceded by the parties that the dismissal order was passed on first charge sheet dated 11-11-95 and later two charge sheets were kept in abeyance due to dismissal order of the workman.

6. The management has refuted facts as to denial of proper opportunity to the workman and not permitting him to defend himself during the domestic enquiry. It is stated that during the suspension period he was allowed to enter into the branch premises with prior permission of the Branch Manager to facilitate inspection of documents etc. It is admitted that on 18-11-95 a F.I.R. was lodged against the workman under Section 420/408 I.P.C. for embezzlement of Rs. 95,000 on different dates. It is clarified that the second charge sheet dated 14-5-96 had no connection with the earlier charge sheet dated 11-11-95. It was further clarified by the management that the dismissal of the workman was on the basis of proved charges contained in charge sheet-cum-suspension order dated 11-11-95. Domestic enquiry was conducted as per rule in accordance with the direction of the Hon'ble High Court dated 10-12-96. The workman fully participated in the domestic enquiry and availed full opportunity to defend himself on charges levelled against him. He had not demanded any document nor had raised any objection in the course of enquiry as would be evident from the enquiry proceedings. His plea in this regard, is, an after thought and fabricated, and so has no substance. After issuance of the first charge

sheet, the workman had filed a Writ Petition No. 7547/96 (S/S) against his suspension order before the Hon'ble High Court, Lucknow Bench, Allahabad. The Hon'ble High Court passed order on 10-12-96 directing the bank to complete the departmental enquiry and award final punishment within 4-1/2 months. Accordingly, the bank acted upon in compliance of the Hon'ble High Court order on completion of enquiry and passed punishment order as per law. The workman was provided copies of the enquiry proceedings and findings of the Enquiry Officer and personal hearing on proposed punishment was also given to him asking him to appear before Disciplinary Authority on 21-4-97 at Regional Office, Lucknow at 11.30 A.M. vide Memo No. LRO/PER/454/97 dated 12-4-97. The workman on his own preferred not to appear before the Disciplinary Authority. The order of dismissal was passed assuming that the workman had nothing to say on the proposed punishment, and dismissal order was passed after considering grave misconduct committed by mis-appropriating bank money deposited by the customers.

7. Two issues were framed on 7-9-2001 to determine fairness of the domestic enquiry and to judge perversity of the findings, which are as follow :

(i) That the domestic enquiry culminating into dismissal of the workman whether was fair and proper ? and

(ii) whether the findings of the Enquiry Officer suffers with vice of perversity ?

8. The management submitted records of domestic enquiry and a copy of the said enquiry record were made available to the workman. For determination of above preliminary issues, it is not necessary to go deep into the merit of the alleged embezzlement as it is primarily required to judge fairness of the enquiry and to evaluate findings to judge whether same are perverse ?

9. It is admitted case of the parties that the workman had filed Writ Petition No. 7547 (S/S) of 1996 which the High Court passed order on 10-12-96 directing the management to proceed with the enquiry and pass appropriate punishment within stipulated time in the said order. The workman was fully aware with early processing of the enquiry. He avoided to file reply on merit, as, according to him any disclosure of defence during domestic enquiry could prejudice his defence in criminal trials. A reply in the domestic enquiry could not have prejudiced his defence. In the criminal proceedings his act constituting offence was to be judged on the basis of prosecution evidence beyond all reasonable doubt, whereas, in the domestic enquiry he was simply required to satisfied the authorities about his having complied with rules and procedure in the matter of making entries in the records and depositing cash to disprove alleged misconduct on his part. In any manner such explanation could not have prejudiced defence case in the criminal proceeding. The workman, by not filing any reply to the charges denied himself an opportunity to prove his bona fides. Unlike criminal proceedings, not act, but conduct, is relevant in domestic enquiries, and main thrust remains to judge suitability of the charged employee to be retained in service.

10. The domestic enquiry against the workman commenced on 8-2-97. The workman was present in person. Prior thereto, the first date of enquiry was 25th January, 1997 at 11.00 A.M. The workman preferred not to appear and sought adjournment which was allowed by the Enquiry Officer and next date was fixed on 8-2-97. On this date the Enquiry Officer enquired from the workman about his having received charge sheet. The workman stated in affirmative terms and also pleaded not guilty. He was asked by the Enquiry Officer whether he would like to seek any assistance on which the workman replied that he would defend his case himself. He also produced list of documents and witnesses which were to be relied by him. Some documents were also produced by him on the said date. Again, a very specific query was put to him whether he received the documents and list of witnesses to be relied by the Presenting Officer? In reply he accepted to have received all documents and list of witnesses. The workman was also satisfied with correctness of the documents and was not eager to seek re-verification from original documents. These records give inference that the workman was in possession of the documents to be relied by the management during the domestic enquiry. His plea of denial of documents or materials to disentitle him make effective cross examination, is, totally imaginary and an after thought.

11. The domestic enquiry was to be processed and completed within a time frame as per the direction of the High Court. The workman was alive to this fact. The workman himself cross examined management's witnesses and sought adjournment as and when necessary to prepare the case. The records of Enquiry proceedings were signed by him so, his plea of prejudice is not real. The management examined Sabhajeet Singh, a co-worker at Dena Bank, Nagan Mahal Road Branch, Lucknow since 9-2-1993. He proved that cash of Rs. 40,000 only was received by the workman and he signed counter foil of the receipt. This amount pertained to SB A/c. 4820, and the cash amount was received on 20-9-95 by the workman himself, functioning as head cashier. This amount was not deposited and embezzled by the workman.

12. The workman cross examined the witness and a specific question was put as how he could say that initial appearing on the counter foil was his. The witness replied of being familiar with his signatures, as they were colleagues and he had seen his signatures for a number of years. On request of the workman, the case was adjourned and this witness was brought again for cross examination on 11-2-97. the workman declined to cross examine the witness any further on plea that criminal trial in the court was pending. The workman had filed Writ Petition. The direction of Hon'ble High Court was law of this case and the management produced evidence to prove charges. MW Sabhajeet Singh proved entrustment of money to the workman and also that he did not enter the amount and misappropriated the same. It was best available evidence. A plea was raised that the account holder was not produced to prove entrustment. In banking, no account holder can state as who amongst the officials received money. Reliance on receipt issued in

token of deposit with bank seal is taken as proof. The account holder could not have identified the workman after such a long time. His signature, on the receipt was proved by the management's witness. This signature was not disputed by calling hand writing expert by the workman. MW Sabhajeet Singh a co-worker was familiar with working and also signatures of the workman was rightly relied by the Enquiry Officer. Taking so, the finding of the Enquiry Officer is not perverse and is based on reliable evidence.

13. It is pleaded by the workman that domestic enquiry should have deferred till disposal of the criminal case. This submission is apparently misconceived. There is no bar of initiating domestic enquiry during the criminal proceeding. The purpose of a criminal proceeding and domestic enquiry are quite distinct and not dependent on each other. The domestic enquiry judges a employee about his future usefulness where as the criminal proceedings if proved goes in conviction on the basis of a proved offence. In view of the direction of the Hon'ble High Court, the management had no option to complete enquiry within given time frame. This plea is thus rejected.

14. It is further pleaded that show cause notice dated 12-4-97 was served on him on 14-4-97. The dismissal order was passed on 23-4-97 before stipulated time to reply show cause notice and this fact shows biased approach of the management. Earlier to this show cause notice, a copy of the enquiry report was forwarded to the workman for submission of his comments/explanations, which was not replied. There was no likelihood of a changed verdict, even after few days, particularly, the workman having shown disinclination to disclose his defence and also cross examining the management's witness.

15. Thus, in the totality of the facts and circumstances, the only inference is that the domestic enquiry was fair and proper and also that the findings of Enquiry Officer culminating into punishment of dismissal, is not perverse. The domestic enquiry is held fair and proper. Looking into gravity of misconduct, the punishment of dismissal is not disproportionate and needs no interference.

16. Accordingly, the reference is answered against the workman. He is not entitled to any relief.

Lucknow,

5-2-2002.

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 11 फरवरी, 2002

का.आ. 838.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, मुम्बई के पंचाट (संदर्भ संख्या 2/7 ऑफ 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-02-02 को प्राप्त हुआ था।

[सं.एल.-12012/132/2000-आई.आर.(बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 11th February, 2002

S.O. 838.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27 of 2001) of the Central Government Industrial Tribunal-cum-LC No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 6-2-2002.

[No. L-12012/132/2000-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar.—Presiding Officer.

Reference No. CGIT-2/7 of 2001.

Employers in relation to the Management of
Dena Bank.

The Asstt. Gen. Manager(P), DB,
7th Floor, Maker Towers,
'E' Wing, P.B. No. 6058,
Cuffe Parade,
Mumbai-400 005.

AND

Their Workmen.

Sh. Rajesh D. Sonawane,
GRDFL, Gulam Mohd. Chawl,
Room No. 28,
Dharavi Cross Rd, Dr. 27/6-17DD
Mumbai-400 017.

APPEARANCES :

For the Employer.—Mr. R. S. Pai, Advocate.

For the Workmen.—No Appearance.

Mumbai, dated 10th January, 2002.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/132/2000/IR(B-II), dated 10-1-2001, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947, have referred the following dispute to this tribunal for adjudication.

“Whether the action of the management of M/s. Dena Bank, Mumbai by terminating the services of Shri Rajesh Dadarao Sonawane is justified and proper? If not, then what relief the workman is entitled to?”

2. On receipt of reference, record shows that, this Tribunal issued notices (Exhibit-2) to the workman. However, the same returned back with

endorsement, that number of chawl was not mentioned. The management Counsel Mr. Pai reported vide (Exhibit-6) that address mentioned on the schedule order was correct and therefore again on the same address, notice was issued (Exhibit-7). However, the envelope received back with endorsement 'not known'. Management vide affidavit (Exhibit-9) confirmed the address on which the notices were sent twice.

3. It is seen from the 'schedule' notice was sent by the Ministry by Registered post, mentioning therein, to file the Statement of claim in the stipulated time, however despite that, Shri Sonawane did not turn up. This shows that Sonawane having knowledge of the reference, did not pursue the same, which indicative to show that, Sonawane does not intend to prosecute the reference. Therefore, the reference, deserves to be disposed of and hence the order :—

ORDER

Reference stands disposed of for non-prosecution.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 11 फरवरी, 2002

का.आ. 839.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, मुम्बई के पंचाट (संदर्भ संख्या 2/57 ऑफ 1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-02-02 को प्राप्त हुआ था ।

[सं.एल.-12012/122/97-आई.आर. (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 11th February, 2002

S.O. 839.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-2/57 of 1998) of the Central Government Industrial Tribunal-cum-LC No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 6-2-2002.

[No. L-12012/122/97-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

S. N. Saundankar, Presiding Officer.

Reference No. CGIT-2/57 of 1998

Employers in Relation to the Management of Bank of Maharashtra

The Regional Manager,
Bank of Maharashtra,
Goa Region, Datta Prasad Bldg.,
MG Road,
Panaji, GOA-403 001.

AND

Their Workmen
Bank of Maharashtra Karmachari Sangh,
General Secretary, BOMKS, Zonal Office,
C/o BMS, 487, B Ravivar Path,
Kothapur.

APPEARANCES:

For the Employer: Mr. A. P. Nayak, Representative.

For the Workmen: Mr. S. C. Kulkarni, Workman.
Mumbai, Dated 18th December, 2001

AWARD-PART-II

By the Interim Award dated 4-10-99, my Learned Predecessor held that inquiry conducted against the workman was as per the principles of Natural Justice and the findings are not perverse. Consequently point as regards punishment remains for the consideration of this tribunal and on this ground the workman Sh. S. C. Kulkarni filed separate claim statement dated 22-4-2000 (Exhibit-25) contending that the punishment awarded is excessive and totally unnatural. The management Bank of Maharashtra opposed the same contending that the enquiry on the charges of misconduct was held proper by the tribunal, which were of grave nature. Bank is a service industry acting as a trustee for the money of the depositors. It is contended no employer who carry on business of banking can allow indiscipline on the part of the employee. It is contended workman who had indulged in several cases of misconduct, in fact deserves severe punishment. However, taking sympathetic approach, the punishment of reduction in the pay and the withdrawal of special allowance was passed, which in fact is inadequate. It is therefore contended that the claim of the workman be dismissed in limine.

2. My Learned Predecessor as stated above, gave findings on preliminary issues framed at Exhibit-8, and now the findings on issues Nos. 3 & 4 are to be recorded. On this the workman by his affidavit in lieu of Examination-in-Chief (Exhibit-29) reiterated the contents in the Statement of Claim (Exhibit-25). Union's Secretary Mr. Ravindra Deshpande was examined at (Exhibit-33) and thereafter union closed evidence vide purshis (Exhibit-34). Management bank did not lead oral evidence vide purshis (Exhibit-35).

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3. Management filed Written submissions (Exhibit-36) and the workman at (Exhibit-37).

4. On going through the record as a whole and the written submissions, I record my findings on the following issues for the reasons mentioned below:

Issues	Findings
3. Whether the action of Bank of Maharashtra in imposing the punishment of reduction in the pay to the next lower stage and withdrawal of Special Allowance permanently of Kuulkarni is legal and justified?	Yes.
4. If not, to what relief the said workman is entitled to?	As per order below.

REASONS

5. In the beginning it is to be noted that the domestic inquiry conducted against the workman was held proper and the findings recorded by the inquiry officer were not perverse. The point as regards punishment therefore remains for consideration of this tribunal. According to the workman he was punished severely. The punishment awarded to him i.e. reduction in the pay to the next lower stage and withdrawal of special allowance permanently, is excessive compared to the charges proved. On the other hand, the management contended that twenty charges alleged by way of two chargesheets dated 11-1-93 and 1-9-93 in connection with misconduct on the part of the workman working in bank industry, have been proved and looking to the seriousness of the charges punishment is in fact inadequate. It is seen from the record, the material charges i.e. indecent behaviour unauthorised absence, insubordination, certainly said to be unbecoming on the part of the employee in the industry like bank.

6. True it is, penalty imposed must be commensurate with the gravity of the conduct and that any penalty disproportionate to the gravity of misconduct would be violative of Article-14 of the Constitution for which reliance can be had to "Ranjit Thakur Vs. Union of India (1987) 4 SCC 611 (AIR 1987 SC 2386) wherein Their Lordships observed:

"The question of choice and quantum of punishment is within the jurisdiction of the Tribunal (Court Martial). But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh it should not be so disproportionate to the offence to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as a part of the concept of judicial review would ensure that even on an aspect which is otherwise within the exclusive power of Tribunal, if the decision of the court even as to sentence is an outrageous defiance of logic, then sentence would not be immuned from correction. Irrationality and perversity are recognised grounds of judicial review".

7. On going through the record which indicate that 20 charges were proved against the workman who is said to be an active leader of trade union, working in the industry like bank, in the light of the decision referred to above hardly can be said that punishment awarded to him is excessive. The action of the management in view of the position being totally legal and justified workman is not entitled to any reliefs. Consequently Issue Nos. 3 & 4 are answered accordingly and hence the order :—

ORDER

The action of the Bank of Maharashtra in imposing the punishment of reduction in the pay to next lower stage and withdrawal of special allowance permanently of Shri S. C. Kulkarni is legal, proper and justified, consequently he is not entitled to any reliefs.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 11 फरवरी, 2002

का.आ. 840.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल.आई.सी. ऑफ इण्डिया के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट (संदर्भ संख्या 22/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-02-2002 को प्राप्त हुआ था।

[सं.एल.-17011/18/99-आई.आर. (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 11th February, 2002

S.O. 840.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2000) of the Central Government Industrial Tribunal-cum-LC, Kolkata as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 6-2-2002.

[No. L-170011/18/99-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 22 of 2000

PARTIES :

Employers in relation to the management of LIC of India.

AND

Their workmen

PRESENT :

Mr. Justice Bharat Prasad Sharma, Presiding Officer.

APPEARANCE :

On behalf of Management : Mr. A. K. Sinha, A.A.O. (P & IR).

On behalf of Workmen : Mr. A. K. Saha, General Secretary of the Union.

State : West Bengal.

Industry : Life Insurance.

AWARD

By Order No. L-17011/18/99/IR(B-II) dated 24-3-2000 the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Life Insurance Corporation of India, Calcutta Metropolitan Division-I Calcutta in imposing punishment on Shri Shiv Charan Lal Sweeper (SR No. 321031) removing him from service is justified? If not, to what relief the concerned workman is entitled?”

2. The present reference has been made on the dispute raised by the Jatiya Jiban Bima Karmachari Samiti, affiliated to I.N.T.U.C. of the L.I.C. of India, Eastern Zone on behalf of the workman Shiv Charan Lal on his dismissal from service by the management of the Life Insurance Corporation of India, Eastern Zonal Office, Calcutta.

3. From the written statement filed on behalf of the union it appears that the said workman, Shiv Charan Lal was permanently employed as Sweeper in its Divisional Office, C.M.D.O.-I, Calcutta-72. It is stated that the office had allotted a staff quarter to the concerned workman in the same place where some employees of the same cadre were allotted quarters. It is also stated that due to lack of proper minimum living required accommodation, the staff living there had constructed temporary sheds of their own to maintain themselves according to their needs and in the same manner the concerned workman had also constructed a purely temporary shed with the help of tarpaulin and bamboo sticks for cooking space and food etc. It is stated that the workman concerned belongs to down-trodden community of sweeper class and because of his ignorance he did not know the formalities required and he was not obstructed or objected by anybody while the structure was being put up. Thereafter on 2-4-1994 a chargesheet was issued against the workman by the management in this matter. Again, a chargesheet was issued on 1-9-1994 in the said matter. When the workman concerned came to know about the realities in course of the departmental enquiry, he demolished the same and informed the Enquiry Officer also though the other persons the staffs who had also made construction, did not do so. The union also wrote a letter dated 21-9-1995 in this regard to the management giving out the facts and details of the matter, but the management did not pay any attention to it. The aforesaid facts were also brought to

the notice of the Enquiry Officer and the other authorities, including the disciplinary authority from time to time in course of discussions, but the Enquiry Officer acting as a subordinate of the disciplinary authority did not take any notice of the facts and in an arbitrary manner submitted a wrong and unjustified enquiry report and on the basis of this enquiry report, the management imposed a severe punishment on the workman for his removal from service by order dated 10-7-1995. It was in a very arbitrary manner and it indicated the prejudice of the management to remove the workman concerned from his service by hook or by crook. The workman, thereafter, appealed to the appellate authority, but the appellate authority also turned a deaf ear to the submission of the said workman without applying its mind and passed an order on 21-9-1995. Thereafter the workman concerned submitted a memorial to the Chairman of the L.I.C. of India on 25-3-1996 which was disposed of by the Chairman after a long lapse of time on 27-8-1999 when the Regional Labour Commissioner (Central), Calcutta enquired about it on being moved by the workman. The Chairman also did not apply his mind and turned down the memorial in routine manner by his order dated 27-8-1999. It is further stated that the union had been discussing the matter with the management by writing letters from time to time to review the punishment, but in spite of assurance given by the management, the order of dismissal could not be reviewed and so the union raised the dispute and on failure of the conciliation proceeding, failure report was submitted to the Govt. of India, Ministry of Labour and the present reference was made. It has been prayed on behalf of the union that the proper relief be granted and necessary direction be issued to the management in this regard.

4. A written statement has been filed on behalf of the management also. The written statement consists of three parts in several paragraphs. In Part-A, the validity of the reference itself has been challenged saying that the workman was dismissed in proper manner after proceeding accordingly to regulations and therefore the question of raising industrial dispute did not arise. In Part-B, it has been stated that the concerned workman was removed by adopting proper procedure and the facts have been stated. It is stated that the said workman who was attached to O.S. Department, C.M.D.O.-I of the L.I.C. as per his entitlement was allotted a room for occupation alongwith his family in the Metropolitan Building, but in spite of his being allotted a quarter, he constructed four temporary hutments in unauthorised manner on the terrace of the Rallis Building and continued to stay there with his family in illegal manner on false pretext of inconvenience. It is further stated that the said workman was directed by the Security Officer of the L.I.C. vide his letters dated 20-12-1993, 31-1-1994 and 28-3-1994 to vacate the hutments and to demolish the same, but the workman did not comply with the direction. It is further stated that the said workman was allotted sub-standard staff quarter in the Metropolitan Buildings vide a letter dated 5-11-1993 by the management, but he did not occupy the same. Then the management sought explanation from the concerned workman and the explanation was offered by him vide his letters dated 13-1-1994, 5-2-1994 and

30-3-1994. The explanations were found unsatisfactory and then the management was constrained to issue a chargesheet on 28-4-1994 for breach of Regulation 21 of the L.I.C. of India (Staff) Regulations, 1966. It is stated that for such mistakes or omissions the workman could be awarded any of the penalties specified under Regulation 39(1)(a) to 39(1)(g). It is stated that by the said chargesheet the workman concerned was invited to give explanation within 15 days from the receipt of the chargesheet regarding his adamant behaviour. It is also further stated that while proceeding in respect of the above chargesheet was pending, the said workman constructed another temporary hutment in unauthorised manner in the same terrace of the Rallis Building and kept the same under his occupation and he also occupied a sub-standard room on the terrace of the building. It is stated that for such repeated acts, he was again issued a chargesheet on 1-9-1994 for breach of Regulation 21. By the said chargesheet the said workman was again invited to give his statement with regard to admission or denial of charge within 15 days of the receipt of the chargesheet and since the reply given by him were not round satisfactory and he admitted the guilt on his part, the management was constrained to initiate disciplinary proceeding as per the Regulation and in course of the proceeding all reasonable opportunities in accordance with the tenets of natural justice were given to him. The workman concerned was also assisted by some person in his defence and he attended the day-to-day proceeding in respect of both the charges and the copies of the relevant documents were also furnished to him. The workman was also given sufficient opportunity to cross-examine the management witnesses and also to examine his own witnesses. The workman alongwith his defence assistant participated in the enquiry and did not raise any kind of objection regarding the manner of enquiry or the bias on the part of the Enquiry Officer. So, after the enquiry proceeding concluded, the Enquiry Officer submitted a report to the disciplinary authority and according to the report the charges levelled against the delinquent workman were found to be proved. So, the disciplinary authority on considering the enquiry report with an objective and open mind and concurring with the enquiry finding, issued a second show cause notice to the workman concerned proposing penalty of removal from service in terms of Regulation 39(1)(f). The workman also replied to the said second show cause notice vide his letter dated 1-6-1995, but it did not find favour with the disciplinary authority and the said disciplinary authority, Senior Divisional Manager inflicted the punishment of removal of the said workman from service by order dated 10-7-1995 and thus the workman was removed with immediate effect. It is also stated that against the said order of removal the workman also filed appeal to the Zonal Manager the appellate authority and the appellate authority considered the contentions of the workman and after considering the relevant records concurred with the order of the disciplinary authority and dismiss the appeal by order dated 21-9-1995. It is further stated that after the appeal was dismissed the said workman also filed a memorial before the Chairman on 25-3-1996 and after considering the facts and circumstances and contention of the workman in the memorial, the Chairman dismissed the same by an order dated 27-8-1999. It

is also stated that the union filed application for review under Regulation 48(2) of the Staff Regulations before the Zonal Manager at various stages and tried to evoke sympathy for the workman, but in all these memorials and communications the factum of commission of misconduct was not denied and the admission of guilt was never disputed. In this background surprisingly the union took up the matter in an industrial dispute. In Part-C of the written statement, the statements made on behalf of the union in different paragraphs have been denied, excepting for the matters of record and the union was asked to prove the allegations.

5. Later, a rejoinder to this written statement was also filed on behalf of the union in which certain allegations made by the management were denied and it has been finally prayed that the workman be ordered to be reinstated in service with full back wages by quashing the order of punishment against the workman concerned.

6. From the averments in the two written statements it appears that the workman challenged the correctness of the enquiry proceedings also and the management vehemently challenged it and requested to take up the matter as preliminary issue. But, when the hearing commenced the challenge to the correctness and fairness of the enquiry proceeding or the report was not seriously pressed and therefore the evidence was led on behalf of both the parties for finally considering the matter on merit. It is therefore clear that the enquiry report remains unchallenged and there is no question of considering the fairness or otherwise of the enquiry report or the enquiry proceeding. So far as the punishment awarded to the workman is concerned, the punishment has also been awarded according to the provisions of the Staff Regulations. But, at the time of final argument it was submitted on behalf of the union that the punishment is not commensurate with the act of commission on the part of the workman concerned. Therefore, this aspect of the case should be considered.

7. So far as the evidence is concerned, one witness was examined on behalf of the union and he is the concerned workman, Shiv Charan Lal himself. He has stated the facts that he started working in 1977 and worked with the L.I.C. for 18 years and thereafter he was removed from service. Then he represented his case to the Zonal Manager and also appealed to the Chairman and after 2 years he received information that his prayer was refused and then he approached the union which espoused his case. He has stated that he was residing at Rallis Building at 16, Hare Street, Calcutta where many persons were residing. He has also stated that he was provided a small room in the building and because of the shortage of space he had constructed a hut in the campus for the purpose of using it as a kitchen, because his wife was a heart patient and was not in a position to cook inside the room. He also stated that some other persons such as Shyam Lal, Birendar Prasad, Nathu Lal had constructed huts in the similar manner. He also stated that one Deo Muni Yadav was also living in a quarter by the side of his room and he was a Clerk in the L.I.C. He also admitted that enquiry was held against him

before his removal and he was called during the enquiry. He further stated that when he went to the enquiry, he learnt that the enquiry was in connection with the hut constructed by him and then he removed the hut. He has also stated that he was removed from service, but no action was taken against the other persons who had similarly constructed huts. In his cross-examination, he has stated that he was asked by the Security Officer to remove the hut and vacate the quarter, and then he had removed the hut and vacated the quarter, but he says that he had removed the hut and vacated the quarter after the enquiry was started and he had given in writing in course of the enquiry. He has denied that he continued to reside in the campus even after vacating the quarter.

8. On the other hand, altogether four witnesses have been examined on behalf of the management. MW-1, Amitava Mukherjee happened to be the Building Inspector in the L.I.C. at the relevant time. According to him in October, 1992, he had inspected the building alongwith the Security Officer and found that on the roof of the Rallis Building 8 to 9 semi-permanent hutments erected. He then discussed with the Security Officer and advised him to submit a report. According to him Shiv Charan Lal was also one of the persons who had constructed the hutments and had occupied the same. According to him he had prepared 3/4 rooms in the hutment. He also further stated that Shiv Charan Lal did not remove the hutment in spite of several reminders to him by the security personnel and actually once he had broken two of the rooms, but after sometime he had reconstructed the same. According to him the hutments were constructed in unauthorised manner. He had also heard that Shiv Charan Lal was allotted a quarter in the Metropolitan Building, but he did not go there. He further stated that after his removal from service, Shiv Charan Lal removed the hutment. In his cross-examination he has stated that altogether 3/4 persons had constructed the hutments like Shiv Charan Lal and he had submitted report naming all those persons, but he is unable to say as to against how many persons action was taken by the management.

MW-2, Bhabani Prasad Majumdar happens to be Assistant Administrative Officer of the L.I.C. in the Zonal Office. According to him, it was his duty to control the watch and ward and maintenance of the LIC building. He knew Shiv Charan Lal since 1990-1991 and in 1994 he learnt that Shiv Charan Lal had made some unauthorised construction in the Rallis Building. So, he had gone here and seen the structure, which was in the southern portion of the roof of the Rallis Building and there were more than three rooms. He then reported the matter to the Security Officer. He also heard that Shiv Charan Lal was allotted a room in the Metropolitan Building, but he did not go there to occupy the same. In his cross-examination, he has stated that there was no verandah, bath room or kitchen in the hutments constructed by Shiv Charan Lal and the structure was temporary made of bricks, bamboos and straw, tiles and plastic etc. He has stated that Class-IV employees were staying in the Rallis Building. He has denied his knowledge that one Mr. Tewari an Assistant Engineer was also living in that building and that Mr. Tewari was living in the same hutments constructed there. He also does not remember as to who was staying in the adjoining hutment of Shiv Charan

Lal. He also does not know as to whether any action was taken against any other person for making unauthorised construction in the Rallis Building.

MW-3, R. L. Rathore is a Security Officer of the L.I.C. since 1997 and he has stated that at the relevant time he was not present. It is obvious that since the incident relates to 1993-94, this witness had no existence in the L.I.C. then.

MW-4, Susanta Das happens to be a Watchman in the L.I.C. stationed at Rallis Building and he was also a watchman in the same building at the relevant time. He has stated that he cannot say whether Shiv Charan Lal had any allotment order in his favour in the building and he has knowledge about the removal of the unauthorised temporary construction by him. He has also stated that when he demolished the structure, he demolished it in whole and thereafter he did not reconstruct it. Therefore, in his statement MW-4 has contradicted the claim of the management that even after demolition of the structure, Shiv Charan Lal had reconstructed it after sometime.

8. However, from the facts and materials appearing on the record it appears that so far as the allegation of construction of unauthorised hutment by the concerned workman Shiv Charan Lal is concerned, it becomes admitted. There is nothing, therefore, to comment against the charge sheet or the enquiry proceeding or the enquiry report. Under the regulation the workman was also liable to some kind of punishment regarding which there cannot be any doubt, but the question is whether the punishment awarded to this Shiv Charan Lal is commensurate to the offence committed by him. In this connection it is paid but to note that under Section 11A of the Industrial Disputes Act, 1947 it becomes the duty of the Tribunal to consider the adequacy or otherwise of the punishment, which says "where an industrial dispute relating to discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceeding, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment, in lieu of discharge or dismissal as the circumstances of the case may require:

9. In this regard, on several occasions higher Courts, including the Hon'ble Supreme Court have made observations from time to time. It was held in the case of Rajasthan State Transport Corporation v. Labour Court & Ors. [1993 (67) F.L.R. 484] by the Hon'ble Rajasthan High Court that in case of discharge or dismissal of a workman Labour Court, Tribunal or National Tribunal has powers to give appropriate relief and the Tribunal can re-appreciate the evidence and can come to its own conclusion. It is also further observed that the Tribunal can adjudicate upon the legality and propriety of orders passed by the employers for the purpose of doing justice between the parties. Similarly, in the case of Indian Explosives Ltd. v. The Third Industrial Tribunal, West Bengal & Ors. [1991(62) F.L.R. 334] it has been

held by the Hon'ble Calcutta High Court that after introduction of Section 11A, the Tribunal has got power to set aside any order of discharge or dismissal and also to pass lesser punishment in the appropriate cases. In a case of Rajasthan Road Transport Corporation v. Secretary, Transport Workers Union and Anr. [1993 (67) F.L.R. 333] it has been held by the Hon'ble Rajasthan High Court that when on admission of guilt by the employee, the charges were found proved, but the Labour Court substituted the penalty into reinstatement with forfeiture of defective back wages, the Award cannot be termed as perverse or beyond jurisdiction. It has also been held in the case of the Karnataka State Road Transport Corporation v. N. Nagendrappa & Anr. [1991 (63) F.L.R. 426 = 1992 (11) LLJ 168] that the Labour Court or Industrial Tribunal has discretionary power and if the Court is of the view that the order of dismissal was not proportionate and it was extremely harsh, the Tribunal or the Court can interfere with the punishment. In the case of Ganesh Aluminium Factory v. Industrial Tribunal Madras [1982 (45) F.L.R. 681] it was held by their Lordship that under section 11A the Tribunal has liberty to consider not only whether the finding of misconduct as recorded by the management is correct, but also to differ from such a finding if an appropriate case is made out and if ultimately the Tribunal comes to the conclusion that the misconduct is proved, all the same it can interfere with the punishment, if the punishment is considered to be not justified even on the finding of misconduct. It has also further been observed that there can be no doubt that even a case where the Tribunal agrees with the management that the misconduct is proved, it may award a lesser punishment, if it is of the opinion that the proved misconduct does not merit punishment by way of discharge or dismissal. Thus, it is very clear that this Tribunal has got power to consider the adequacy or otherwise of the punishment of dismissal imposed on the workman concerned, irrespective of whether the workman was held guilty or not.

10. As it has been observed earlier, there is no question of considering the correctness or otherwise of the punishment awarded to the workman concerned, because the validity of the enquiry report has not been dispute in true sense. But, so far as the quantum of punishment is concerned, it may be noted that the punishment awarded to the workman is not the only punishment provided in such case in the Regulation also. This is the harshest and severest punishment awarded to a workman. In this regard certain facts may be noted that the workman had continued to work L.I.C. for a altogether 18 years before his dismissal and so far as the construction of the temporary hutments are concerned, he also never denied; rather, he all-along pleaded that because of paucity of space in the room provided to him for residence, he had raised some structures of temporary nature as others had also made and he has also stated that subsequently when the proceeding was initiated against him in respect of his building, on his own, he removed the structure. The allegation of the management that he had reconstructed the hutment after once demolishing the same is disproved by the evidence of MW-4. Admittedly, the workman concerned was a lowly paid employee of the lowest grade in the service and he was provided only a small room for his residence.

He also saw other persons constructing some temporary structures for releasing pressure of his single room and so he constructed some temporary structures. It has also transpired that several persons had constructed such temporary structures, then why it is so that this person was only singled out to be punished with such harshest kind of punishment. It shows some bias on the part of the management. Therefore, in my opinion, the punishment of dismissal awarded to this workman cannot be said to be proportionate to his mistake or offence and the punishment of dismissal cannot be termed as justified by any means.

11. I, therefore, find that the punishment of dismissal from service as imposed on this workman is not commensurate with the act of commission or commission committed by this workman for which he was charged. Some other lighter punishment could have been awarded to him. It appears from his evidence that when he deposed on 12-3-2001 his age was about 54 years, so he has not reached the age of superannuation in regular course. Because of his dismissal he has also been deprived of his retirement benefits, which appears to be unjustified and improper.

12. In this view of the matter, the punishment of dismissal awarded to Shiv Charan Lal the concerned workman is quashed and it is hereby ordered that the workman be reinstated in service forthwith. However, because, he has remained out of job for such a long period, it will not be proper to order payment of back wages to him, which will fall heavily on the management and non-payment of back wages shall be treated as punishment awarded to him. Therefore, he shall be reinstated in service without payment of any back wages, but continuity of his service shall not be affected so far as the retirement benefits at the time of his superannuation is concerned.

Award accordingly .

B. P. SHARMA, Presiding Officer

Dated, Kolkata,
The 29th January, 2002.

नई दिल्ली, 12 फरवरी, 2002

का.आ. 841.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 174/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-02-2002 को प्राप्त हुआ था।

[सं. एल-12012/279/97-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 12th February, 2002

S.O. 841.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 174/98) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur now as

shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 11-2-2002

[No. L-12012/279/97-IR(B.I.)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SRI R. P. PANDEY, PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT SARVODAYA NAGAR, KANPUR

Industrial Dispute No. 174 of 1998

In the matter of dispute between—

Sri A. N. Pandey,
Deputy General Secretary,
State Bank of India Karmchhari Sangh,
B-4/20, Hanuman Ghat Varanasi.

AND

The Assistant General Manager,
State Bank of India Region-III,
Zonal Office,
Varanasi.

AWARD

1. Central Government Ministry of Labour, vide its notification No. L-12012/279/97-I.R.(B-I) dated nil has referred the following dispute for adjudication to this tribunal—

“Whether the action of the management of State Bank of India in withdrawing special allowance to Sri Lallan Misra consequent upon his transfer is justified? If not to what relief the workman is entitled?”

2. Statement of claim on behalf of the workman has been filed with the allegations that the concerned workman was appointed as messenger with combined designation post in 1981 by the bank at Subodh Muffic Square Branch, Calcutta, and as per existing bank no rule applicable Calcutta Circle the concerned workman was promoted the post of Duftary-cum-messenger with effect from 15-4-90 vide branch letter No. Gen/20/73 dated 7-6-90. It has been alleged that the concerned workman was transferred from Calcutta to Zonal Office Varanasi on his request by the management like other employees of the bank Sri Mishri Lal from Calcutta to Varanasi and Sri R. D. Rawat from Bhuneshwar to Varanasi Circle after getting their promotions of Duftary from Calcutta and Bhuneshwar circle. It has further been alleged that the concerned workman is member of the Karamchhari Sangh while Sri Mishri Lal and Sri R. D. Rawat are the members of rival union SBISA. It has also been alleged that as per bank's practice inforce an employee willing for his transfer has to give an undertaking before the bank that he will not claim any higher post relief for a period of one year at his requested branch after getting his transfer and as such all the three employees including the concerned workman gave their undertaking to their respective

branches of not claiming officiating allowances for higher posts like Jamadar, Record Keeper posts and that will not mean that they will forego their permanent promotion of Daftary. It has been alleged that that will not mean that they will forego their permanent allowance of Daftary to the concerned workman but continued to pay Daftary allowance to Sri Mishri Lal and Sri R. D. Rawat. It has further been alleged that the management paid Sri Mishra his permanent promotional allowance of Daftary since June, 1991 to January, 1992 but on the pulls and pressure of rival union the management discontinued his allowance of daftary treating his undertaking as refusal from his promotion to the post of daftary while that is not so as Sri Mishra the concerned workman never refused his promotion for the post of daftary or jamadar. On the basis of above allegations it has been prayed that the concerned workman be paid allowance of Daftary since February, 1992 on wards and the concerned workman should further be promoted to the post of Jamadar as other employee of the bank like Sri Mishri Lal and R. D. Rawat.

3. The management of State Bank of India filed written statement with the allegations that the transfer of the concerned workman was materialised subject to the undertaking and the concerned workman was posted at Rasra Branch under Region 3 Zonal Office of the bank. The workman has tried to club his case with the case of Sri Misri Lal and R. D. Rawat, which have a different and separate footing. It has been alleged by the management that Sri Misri Lal and R. D. Rawat were appointed on 24-12-74 and the concerned workman was appointed on 1-10-81. It has been alleged that in Calcutta Circle seniority of subordinate cadre is considered at Branch level whereas in Lucknow Circle seniority of subordinate cadre is considered at Zonal Level. It is further alleged by the management that there is a long list of much more senior messengers who could not be granted the promotional opportunity in the cadre of Daftari, hence the concerned workman was/is not entitled to get daftari allowance. The management has further alleged that there is no question for the concerned workman to forego his permanent in cadre promotion of Daftari. The concerned workman got the said promotion as per his seniority maintained at Zonal level as per bank policy applicable in the circle. It has further been alleged by the management that story of unfair treatment has been set out mala fide in order to give colour to the case. It is alleged that the concerned workman desires to get in cadre promotion out of turn ignoring quite a large number of senior employee of the Zone which is not just equitable and tenable and if the claim of the concerned workman considered for granting him in cadre promotion it would create dissatisfaction amongst the senior messengers and this will create industrial unrest in the Zone for which the bank is not prepared. It has been alleged that due to over look the concerned workman was paid the daftari allowance for which he was not entitled and later on the management realised the mistake and with drew the said daftari allowance. It has been alleged that the claim of the concerned workman is misconceived hence and tenable. The management by way of additional plea has pleaded that the concerned workman cannot be granted promotion at the cost of creating dissatisfac-

tion and unrest amongst the senior member of the messenger cadre and have given a few details of senior messengers of the zone who have been promoted as Daftari recently. On the basis of above allegations it has been requested that the claim of the workman be rejected.

4. The concerned workman has filed rejoinder but nothing new has been alleged in it except reiterating the facts alleged in the statement of claim.

5. After filing the rejoinder the neither the concerned workman nor his authorised representative appeared in the case and case proceeded ex parte against the concerned workman whereas the management filed documents marked Ext. M-1 to M-7. The management also examined Sharad Kumar Mishra as M.W.1.

6. M.W.1 in his statement on oath has stated that the posts of messenger, mali, watchman, farrash etc. have been categorised in group IV category in the bank and are given combined designation. He has further stated on oath that on the basis of seniority prepared at Zonal level these messengers are given promotion at the post of Daftary and are paid daftary allowance. The management witness has further stated on oath that the concerned workman was transferred from Calcutta to Varanasi on the basis of his undertaking that he will forego the Daftary allowance at transferred place. Management witness has further admitted that due to mistake the concerned workman was paid daftary allowance from January, 1991 to February, 1992 on the basis of LPC and when this mistake was detected Daftary allowance was discontinued. M.W.1 has denied having paid Daftary allowance to any junior employee of the bank in Varanasi Zone. Management witness has further stated on oath that Sri R. D. Rawat and Mishri Lal are senior to the concerned workman and they are being paid Daftary allowance on the basis of their seniority in Varanasi Zone. Thus from the evidence of M.W.1 it is established beyond doubt that the concerned workman was junior to S/Shri Misri Lal and R. D. Rawat and was not entitled to Daftary allowance after his transfer from Calcutta to Varanasi Circle.

7. In view of un rebutted evidence of the management, I am inclined to believe the case of the management bank and accordingly it is held that the action of the management of State Bank of India in withdrawing special allowance to Sri Callan Misra consequent upon his transfer is legal and justified, hence the concerned workman is entitled for any relief in pursuance of the reference made to this tribunal.

8. Reference is answered accordingly.

R. P. PANDEY, Presiding Officer

नई दिल्ली, 12 फरवरी, 2002

का.आ. 842.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधि-करण, जबलपुर के पंचाट (संदर्भ संख्या 232/92) को

प्रकाशित केली है, जो केन्द्रीय सरकार को 11-02-2002 को प्राप्त हुआ था।

[सं. एल-12012/188/92-आई.आर. (बी.-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 12th February, 2002

S.O. 842.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 232/92) of the Central Government Industrial Tribunal-cum-LC, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 11-2-2002.

[No. L-12012/188/92-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR

Case No. CGIT/LC/R/232/92

PRESENT :

Presiding Officer : Shri K. M. Rai.

Smt. Usha Sultan Singh Jain,
Clerk Cashier,
Union Bank of India through
General Secretary,
Madhya Pradesh Bahk Karmchari
Sangh, Bakshi Gali,
Indore.

Applicant

Versus

Regional Manager,
Regional Office,
Napier Town,
Jabalpur.

Non-applicant

AWARD

Passed on this 14th day of December, 2001.

1. The Government of India, Ministry of Labour vide Order No. L-12012/188/92-IR (B-II) dated 3-12-92 has referred the following dispute for adjudication by this tribunal—

“Whether the action of the management of Union Bank of India, Indore in refusing the request of Mrs. Usha Sultan Singh Jain for her posting as special assistant at Indore and later posting Mrs. Roshan Bhangar, Junior to Mrs. Jain as Spl. Assistant at Indore was correct? If not, what relief the workman is entitled to?”

2. The workman did not appear in the court when the case was called on for hearing. The management filed an application praying for passing No Dispute Award as the workman has opted for voluntary retirement scheme w.e.f. 20-1-2001. The fact mentioned in this application has not been challenged by the workman.

3. The workman has voluntarily retired from service w.e.f. 20-1-2001 in pursuance of VRS. In view of this fact, No dispute exists between the parties in this case. Hence No Dispute Award is passed.

4. Copy of the award be sent to the Ministry of Labour as per rules.

K. M. RAI, Presiding Officer

नई दिल्ली, 13 फरवरी, 2002

का.आ. 843.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 20/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-2-2002 को प्राप्त हुआ था।

[सं. एल-12011/279/2000-आई.आर. (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 13th February, 2002

S.O. 843.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2001) of the Central Government Industrial Tribunal-cum-LC, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 12-2-2002.

[No. L-12011/279/2000-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR
PRESENT :

B. G. Saxena.—Presiding Officer.

Reference No. CGIT : 20/2001.

Dena Bank.

AND

Shri Sohan Lal Nishad.

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide Order No. L-12011/279/2000-IR (B-II) dated, 22-3-2001 on the following schedule.

SCHEDULE

“Whether the action of the management of the Dena Bank in not giving the pay scale and post of regular sub-staff to Shri Sohan Lal Nishad in the Gariaband Branch of

the Bank is legal or valid? If not, then for what relief the concerned workman is entitled to and with what details?"

In this reference the notices were issued to both the parties on 3-7-2001 and they were directed to appear in the Court and submit the documents concerning the case on 3-8-2001.

On 3-8-2001 the workman Sohanlal Nishad appeared and moved application for seeking time for submitting Statement of Claim. On behalf of the management of Dena Bank, Vakalatnama was filed by S. N. Fuladi, advocate. The case was adjourned to 3-9-2001 and 10-10-2001. On 10-10-2001 the workman Sohanlal Nishad submitted Statement of Claim and the counsel for the management received the copy of Statement of Claim on 12-11-2001.

After that 18-12-2001, 28-12-2001 and 21-1-2002 were fixed for filing Written Statement by the management. On 18-12-2001 nobody appeared from the side of the management of Dena Bank and the order was passed that if no Written Statement is filed in this case, the case shall be decided. Even after the order dated : 18-12-2001, the counsel for the management did not submit Written Statement on 28-12-2001 and 21-1-2002.

On 21-1-2002 nobody appeared from the side of management and Written Statement was not filed from the side of the management. The counsel for the workman moved application that management is not submitting the Written Statement knowing the date fixed in this case, hence the case be decided.

In view of the above facts it is evident that sufficient time was given to the management to file Written Statement from 12-11-2001 to this date but the management has failed to submit the Written Statement.

As the management has not submitted any Written Statement to challenge, the Statement of Claim filed by the workman, the claim of the workman Shri Sohanlal Nishad is decided ex parte.

ORDER

No Written Statement has been filed by the management of Dena Bank, hence the claim of the workman Sohanlal Nishad is decided ex parte.

Date : 21-1-2002.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 13 फरवरी, 2002

का.आ. 844:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 19/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-02-2002 को प्राप्त हुआ था।

[सं. एल-12011/278/2000-आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी।

604 GI/2002—11

New Delhi, the 13th February, 2002

S.O. 844.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 12-2-2002.

[No. L-12011/278/2000-IR (B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer.

Reference No. CGIT : 19/2001

DENA BANK

AND

Jeedhan Kumar Yadav.

AWARD

The Central Government, Ministry of Labour New Delhi, by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-12011/278/2000/IR (B-II) dated : 22-3-2001 on the following schedule.

SCHEDULE

"Whether the action of the management of the Dena Bank in not giving the pay scale and post of regular sub-staff to Sh. Jeedhan Kr. Yadav in the Gudiyari Branch of the Bank is legal or valid? If not, then for what relief the concerned workman is entitled to and with what details?"

In this reference workman Jeedhan Kumar Yadav has submitted Statement of Claim on 10-10-2001. The workman has claimed that he was in service of the Dena Bank as Full Time Cleaner-cum-Sepoy from 15-7-92. The management has not given pay scale and the post of sub-staff to him.

In this reference, from the side of the management of Dena Bank Vakalatnama was filed by Shri S. N. Fuladi Advocate on 3-8-2001. The counsel for the management had received the copy of Statement of Claim on 12-11-2001.

After this date i.e. 18-12-2001, the case was adjourned to 28-12-2001 and 21-1-2002. The counsel for the management did not submit any Written Statement from the side of the management.

On 18-12-2001 the counsel for the management had not appeared and the order was passed that if

no Written Statement is filed, the case shall be decided. Even after this order no Written Statement has been filed from the side of the management of Dena Bank.

Today also the counsel for the management did not appear to submit Written Statement. In these circumstances discussed above, the claim of the workman is decided *ex parte*.

ORDER

The workman Jeedhan Kumar Yadav has filed Statement of Claim on 10-10-2001. The management of Dena Bank did not submit any Written Statement though several dates were given. The claim of the workman is therefore, decided *ex parte*.
Date : 21-1-2002.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 13 फरवरी, 2002

का.प्र. 845.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबंधकों के संबद्ध नियोजकों और उनके कर्मचारों के बीच, झगड़ों में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 7/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-02-2002 को प्राप्त हुआ था।

[सं. एल-12012/331/94--आई आर (बी-II)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 13th February, 2002

S.O. 845.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2000) of the Central Government Industrial Tribunal-cum-LC, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 12-2-2002.

[No. L-12012/331/94-IR(B-II)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR
PRESENT :

Shri B. G. Saxena, Presiding Officer.

REFERENCE NO : CGIT : 7/2000

Bank of Maharashtra

AND

Shri P. G. Gogte

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by Clause (d) of Sub Section (1) and Sub Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-12012/331/94-IR (B-II) dated 19-4-95 on the following schedule.

SCHEDULE

“Whether the action of the management of Bank of Maharashtra, Amravati Region, in dismissing Shri P. G. Gogte, Clerk, from service w.e.f. 10-5-93 is legal and justified? If not, to what relief is the said workman entitled?”

This reference was sent to C.G.I.T., Jabalpur on 19-4-95. This file was transferred to this Court on 23-12-99. The workman P. G. Gogte was alleged to have misappropriated Rs. 34,000/- while he was serving as Clerk in Bank of Maharashtra, Amravati region. He was terminated from service on 10-5-93.

On 30-7-2001 the counsel for the workman moved application that the workman Pramod G. Gogte has died on 13-6-2001. The counsel represented that the legal heirs of the deceased P. G. Gogte have not turned up and another date be given. 29-11-2001 and 16-1-2002 were fixed for further proceedings. Today counsel for the both the parties were heard. The counsel for P. G. Gogte further moved application for adjournment. The counsel for management Dadu Sachdeva argued that the workman has died on 13-6-2001, hence counsel cannot represent the deceased.

It is further argued that no application has been moved by any legal heir of the deceased that they want to contest the case. The counsel for management also argued that the workman P. G. Gogte was unmarried and he has no wife or any son or daughter. As no legal heir of deceased has requested for impleading him as a party in this, case, the proceeding should be dropped. The argument of the counsel for the management is reasonable and proper.

In view of the above facts, the proceedings in this case are dropped.

ORDER

The workman, P. G. Gogte has died on 13-6-2001, hence no relief can be granted in this case. The proceedings in this reference are therefore dropped as the case abates.

The reference is disposed of accordingly.

Date : 16-1-2002.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 13 फरवरी, 2002

का.आ.846.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युनाइटेड वेस्टर्न बैंक लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 238/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-02-2002 को प्राप्त हुआ था।

[सं. एल-12012/148/2000—आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 13th February, 2002

S.O. 846.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 238/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of United Western Bank Ltd. and their workman which was received by the Central Government on 12-02-2002.

[No. L-12012/148/2000-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. Saxena, Presiding Officer

REFERENCE NO. CGIT : 238/2000

United Western Bank

AND

Shri Gopal Prabhulal Rathi

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-12012/148/2000-IR(B-I) dated 28-07-2000 on the following schedule :

SCHEDULE

“Whether the action of the management of United Western Bank Ltd.,

through it's Dy. General Manager, H.Q. Satara in terminating the services of Shri Gopal Prabhulal Rathi, Clerk vide order dated 01-02-97 is legal, proper and justified? If not, what relief the said workman is entitled?”

Gopal Prabhulal Rathi has submitted Statement of Claim that he was working as Clerk in the United Western Bank Ltd. In July, 96 he was posted in Kurhe Panache Tal, Bhusawal branch of the bank in Distt. Jalgaon. He was suffering from Spondylitis and Chronic Ulcer. He could not go on duty in the bank from 12-07-96. He had applied for leave from 12-07-96 with Medical Certificate. After that he had been informing the Branch Manager about his illness. On 10-12-96 he has informed on Telephone that he will resume his duties from January, 97.

The Dy. General Manager issued notice to him on 19-12-96 calling upon him to resume his duties within 30 days and he had received this notice on 27-12-96.

On 18-01-97 he went with Fitness Certificate but he was not allowed to join duty. His service was terminated from 01-02-97 on the ground of his unauthorised absence from 12-07-96 and not joining duty on 27-01-97 inspite of receiving notice dated 19-12-96. He has claimed reinstatement from 01-02-97 with full backwages. The management of the United Western Bank contested the case and V. D. Tanksale, Assistant Zonal Manager submitted written Statement on 3-1-2001. The bank management mentioned in Written Statement that workman Gopal P. Rathi was absent from duty from 12-07-96. He did not submit any Medical Certificate of his illness. He also did not move any application from 12-07-96 for granting him leave. Due to his unauthorised absence for about five months, notice was issued to him by the Dy. General Manager asking him to resume duties at Kurhe (P) Branch within 30 days of receiving the letter. If he failed to do so it will be presumed that he is not interested in continuing service and has voluntarily abandoned the service of the bank. Even after receiving this notice he did not turn up to join duty in the bank and so he was treated as to have abandoned his service. The order to this effect was passed on 01-02-97.

The workman Gopal P. Rathi submitted affidavit through his advocate R. N. Sen. He was cross examined on 24-4-2001. From the

side of bank, the affidavit of Shri Jayant, Asstt. Zonal Manager, Nagpur Zonal Office was submitted on 7-6-2001 and he was cross examined by the advocate of the workman Sh. R. N. Sen.

Both the parties have submitted documents and Written Arguments. The advocate of the workman and the advocate of the bank also argued the case orally.

I have considered the entire oral and documentary evidence on record and the arguments submitted by the parties.

It is admitted to both the parties that workman Gopal P. Rathi was the employee of United Western Bank and he did not attend the duties in Kurhe Branch of United Western Bank Ltd. after 12-07-96. It is also admitted to both the parties that the workman Gopal P. Rathi had received letter No. Personal/JZO/AS/P/96/367 dated 19-12-96 on 27-12-96.

In cross examination on 24-4-2001 the workman Gopal P. Rathi admitted that he was unable to move from 12-07-96 to 17-01-97. He says that he had gone to join duty on 18-01-97. He did not explain any reason as to why he was not allowed to join duty on 18-01-97 by the Branch Manager when he was having good relations with the Branch Manager and he had been informing the Branch Manager about his illness on Phone. He had no enmity with the Branch Manager. He does not say anywhere that the Branch Manager was anyway annoyed from him for any reason. He does not say that for how many days Leave Application was sent by him on 12-07-96. He also does not say anywhere that how many Leave Applications were sent by him to the Branch Manager from 12-07-96 to 17-01-97. He does not say that how many times he extended his leave during this period i.e. 12-07-96 to 17-01-97. The workman has submitted one Leave Application dated 12-07-96 and the Medical Certificate of Dr. Anil J. Khadke. This certificate shows that he was advised 15 days rest by the Orthopedic Surgeon. So this Medical Certificate is from 12-07-96 to 28-07-96 and the illness mentioned in Backache. The workman does not say anywhere that he had any pain on his back or he had taken further certificate from this doctor after 28-07-96. If he was cured from the Backache, why he did not join duties

after 28-07-96, was not explained by the workman. He has obtained two certificates from Dr. S. G. Chowdhury dated 02-09-96 and 28-11-96 for 2 months each. No application has been submitted by the workman, that he had sent the above Medical Certificates to the Branch Manager.

The workman has therefore not produced any evidence that he was continuously ill from 12-07-96 to 17-01-97.

The workman has admitted that he had received the notice dated 19-12-96 on 27-12-96 and in this notice he was asked to join duty within 30 days. This notice also shows that the workman was advised to join duty by the Manager of the Kurhe (P) Branch through letter dated 21-8-96, 27-9-96 and 11-10-1996. He was also informed through this notice that he has not submitted any application or any reason for his absence from duty from 12-07-96. The workman was also informed that if he will not join duty after receiving this letter/notice, it will be presumed that he has voluntarily abandoned the service of the bank.

The statement of Shri Jayant, Assistant General Manager of the Bank also shows that he did not receive any application or Medical Certificate of the workman Gopal P. Rathi after 12-7-1996. The workman also did not come to the bank to join duty on 18-01-97 or 20-01-97. The workman also did not submit any explanation for his unauthorised absence from 12-07-96 till the date of his dismissal from service i.e. 01-02-97.

The counsel for the workman has argued that the workman did not send any application after 12-07-96 as he had been informing the Branch Manager over Telephone that he will resume duty in January, 97. There is no letter of the workman Gopal P. Rathi on record to show that he had informed any date for his joining duty in January, 97 to the management. The workman was very much aware that if he will not move any application for extending his leave after 12-07-96, his leave cannot be sanctioned on any Telephonic Talk. The arguments of the Defence counsel that the workman had been informing on Phone about his illness is therefore baseless. The management of the bank has submitted Ruling 2000-5, Supreme Court Cases-65-Syndicate Bank Versus General Secretary, Syndicate Bank Staff Association & another. In the aforesaid Ruling the Hon'ble Supreme Court has held that "If a Bank employee unauthorisedly absents himself from

work for a period exceeding the prescribed limit of 90 days-Bank intems of bypertite settlement, if serves notice upon him by Registered Post requiring him to submit his explanation and to join work with in the prescribed limit of 30 days-the notice further stating that otherwise he would be deemed to have retired in such circumstances the bank, held-rightly treated the employee to have voluntarily retired from service-hence termination of service without holding any departmental enquiry was not violative of the principle of natural justice”.

In view of the above ruling the notice dated 19-12-96 was served upon the workman on 27-12-96. On this admission of the workman, it is therefore clear that the workman did not join the duty upto 27-01-97. The order of the management bearing No. Personal/JZO/11/97/38 dated 01-02-97 treating the workman to have voluntarily abandoned the service was, therefore, justified.

In view of the above ruling of the Hon'ble Supreme Court it was not necessary to hold any departmental enquiry against the workman before terminating his service from 01-02-97.

ORDER

The action of the management of United Western Bank Ltd. through it's Dy. General Manager, HO, Satara in terminating the services of Gopal Prabhulal Rathi, Clerk vide order dated 01-02-97 was legal, proper and justified.

The workman Gopal P. Rathi is not entitled to the relief claimed by him.

The reference is answered accordingly.

Date : 07-01-2002

B. G. SAXENA, Presiding Officer

नई दिल्ली, 14 फरवरी, 2002

का.अ. 847:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ पटियाला के प्रबंधन के संबंध [नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लेबर कोर्ट चंडीगढ़ के पंचाट (संदर्भ संख्या 73 आर् 1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-02-2002 को प्राप्त हुआ था ।

[सं. एल-12012/66/90-बीआईआर. (बी-3)/बी-1]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 14th February, 2002

S.O. 847.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 73 of 1990) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Patiala and their workman, which was received by the Central Government on 12-02-2002.

[No. L-12012/66/90-IR(B-3)|B-I]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CPM-LABOUR COURT, CHANDIGARH

Case No. I.D. 73 of 1990

Kumari Simrat Kaur,
D/o Sh. Gurbachan Singh,
H. No. B-6, 705, Partap Mohalla,
Partap Chowk, Rohtak (Haryana).

.. Petitioner.

Vs.

General Manager (Operation),
State Bank of Patiala,
Head Office, Mall Road,
Patiala-147001.

.. Respondent.

REPRESENTATIVES :

For the Workman.—Shri N. K. Nagar.

For the Management.—Shri N. K. Zakhmi

AWARD

(Passed on 8th February, 2002)

The Cenral Govt. Ministry of Labour vide Notification No. L-12012/66/90-I.R.(B-3) dated 25th May, 1990 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of State Bank of Patiala in relation to their Sankhol Br. in treating Mis Simrat Kaur, Cashier-cum-Clerk to have voluntarily retired from service vide their letter dated

12-6-87, and not allowing to join duty subsequently is just, fair and legal? If not, to what relief the workman is entitled to and from which date”

2. The applicant in the statement of claim has stated that she joined the bank at Sankhol Branch on 27-8-1985 as cashier-cum-clerk. It is pleaded that on account of her illness the applicant had to proceed on leave w.e.f. 27-3-1987 to 10-11-1987 and she had sent the intimation to the bank alongwith the medical certificate from time to time. She had gone to join duty after this date. Her joining report has been accepted by the manager but he did not allow her to join the duty and informed the applicant that she had been treated as voluntary retired from the services of the bank vide letter dated 30-11-1987. It is pleaded that the applicant was declared fit to join duty w.e.f. 11-11-1987 therefore, the action of the bank to retire the applicant is void and illegal and as no enquiry was conducted against the applicant, she is entitled to be reinstated in service with full back wages and continuity of service.

3. In written statement the management has pleaded that the applicant applied for 3 days casual leave from 18-6-1986 but she did not resume her duties till 2-10-1986. She again started remaining unauthorisedly absent w.e.f. 6-10-1986 and remained absent till 22-3-1987 without any intimation of leave and medical certificate. She did not reply to the letters sent to her to join duty. The management wrote a letter dated 3-3-1987 asking her to join duty within 30 days from the receipt of the letter otherwise it would be presumed that she is not interested in service of the bank. She was given final reminder on 12-6-1987. She did not reply to any letter. Under these circumstances the bank had treated her as voluntarily retired from service. She was not interested in the service of the bank and for this reason, she had not reported for duty and she was voluntarily retired after following the procedure as laid down in the Bipartite Settlement. She is not entitled to any relief. It was thus requested that reference be rejected.

4. Rejoinder was filed on behalf of the applicant reiterating the claim made in the claim statement.

5. In evidence the applicant filed her own affidavit as Ex. W1. She also denied having

received Ex. M1 letter dated 12-6-1987. She also denied of having received letters dated 8-12-1986, 3-3-1987 and 26-3-1987. The management filed the affidavit of Shri S. C. Magoo Branch Manager State Bank of Patiala as Ex. M2 and documents Ex. M3 to Ex. M5. It is admitted by the management's witness that no charge sheet was served on the petitioner.

6. I have heard counsel for both the parties and have gone through the record of the case. It is admitted case of the parties that no enquiry was conducted by the bank for the unauthorised absence from duty against the applicant. It is also admitted that the applicant was retired from service by the order dated 30-11-1987 by the Branch Manager. It is not proved by the management that branch manager was the appointing authority of the applicant and he was competent to treat the applicant voluntarily retired from the Bank service under the provisions of the Bipartite Settlement. It is argued on behalf of the applicant that automatic termination of her services amounts to retrenchment and procedure as provided under the Industrial Disputes Act 1947 has not been followed by the bank in doing so, which also violates the principle of natural justice. The representative of the workman relied on the judgement of the Hon'ble Supreme Court in the case of M/s. Scooters India Ltd. Vs. Mohammad Yaqub and another reported in AIR Supreme Court page 227 in which the Hon'ble Supreme Court has held that overstaying of leave cannot result in automatic termination of service and such automatic termination without affording opportunity of hearing to employee is bad and principle of natural justice has to be complied with. On the other hand the counsel for the management has argued that the service of the applicant has been terminated in accordance with the provisions of the Bipartite Settlement and despite many notices the applicant had not joined the services, so she was rightly retired under the provisions of the Bipartite Settlement. He has referred me to the recent judgement of the Hon'ble Supreme Court in the case of Syndicate Bank Versus General Secretary, Syndicate Bank Staff Association and another reported in Indian Factory Journal (Vol. 96) S.C. Page 661. In this case the Hon'ble Supreme Court has held that the employee had refused to receive the notice and no reply to the notice had been sent by the employee and the action of the bank of retiring the

employee under clause 16 of the Bipartite Settlement is legal and employee deserves no relief. But in the case in hand the order for retiring the employee under the provisions of Bipartite Settlement has been passed by the Branch Manager who was not competent to do so as he was not the appointing authority of the applicant and he was not authorised to do so. Moreover, the applicant approached the bank for joining her services. Her joining report had been taken by the Branch Manager but later on vide order dated 30-11-1987 she was deemed to be retired from the bank's service by the branch Manager. So the authority referred by the counsel for the management is distinguishable. In that case the delinquent once resigned also and later on on humanitarian ground he was allowed to join the bank. But after that also he remained absent from duty and he refused to accept the notice also and no reply to the notice was sent by him. It showed his intention not to serve the bank. In these situation the Hon'ble Supreme Court has held that he was rightly retired under clause 16 of the Bipartite Settlement. But in this case, the applicant had approached the bank and submitted her joining report which was taken by the Branch Manager and later on vide order dated 30-11-1987. She was retired by the order of the Branch Manager under the provisions of the Bipartite Settlement. Moreover the orders were not passed by the competent authority as Branch Manager was not competent to do so.

7. In view of the above, discussion, I am of the considered opinion that the action of the management is treating the applicant to have voluntarily retired from service vide their letter dated 12-6-1987 is not legal. As no charge sheet was served upon the applicant and no enquiry was held. However, taking into consideration the conduct of the applicant in absencing herself from the bank's duty without any leave application and without medical certificate for such a long time and later on taking the shelter of the management's fault, she is not entitled to any backwages etc. The order dated 12-6-1987 is set aside. the applicant is ordered to be reinstated in the service of the bank but she will not be entitled to any back wages etc. Continuity of service is however,

allowed only for pensionary benefits. The reference is answered accordingly. Central Govt. be informed.

Chandigarh

Dated 8th February, 2002

S. M. GOEL, Presiding Officer

नई दिल्ली, 14 फरवरी, 2002

का.आ.848:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लेबर कोर्ट चंडीगढ़ के पंचाट (संदर्भ संख्या 94/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-02-2002 को प्राप्त हुआ था।

[सं. एल-12012/74/90-आई.आर. (बी-3)/बी-1]

अजय कुमार डेस्क अधिकारी

New Delhi, the 14th February, 2002

S.O. 848.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 94/1990) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of State Bank of India and their workman, which was received by the Central Government on 12-02-2002.

[No. L-12012/74/90-IR(B-3) B-1.]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 94 of 1990

Shri Jaswant Singh,
C/o General Secretary,
S.R.I. Staff, Congress,
719, Sector 22-A,
Chandigarh-160017.

.. Petitioner.

Vs.

Regional Manager,
State Bank of India,
Regional Office, Pb.,
Sector 17, Chandigarh-160017. ..

.. Respondent.

REPRESENTATIVES :

For the Workman.—Sh. J. G. Verma.

For the Management.—Sh. V. K. Sharma.

AWARD

(Passed on 6-2-2002)

The Central Govt. Ministry of Labour vide Notification No. L-12012/74/90-I.R.(B-3) dated 30th July 1990 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the S.B.I., Regional Office, (Pb.), Chandigarh, in denying seniority from October, 1979 and admission to pension fund to Shri Jaswant Singh, Guard at their Mohali Branch is legal and justified? If not, to what relief the concerned workman is entitled to and from what date?”

2. The applicant in the claim statement pleaded that he was recruited as armed guard in the bank on 18-1-1974. His services were terminated but he was again allowed duties and paid all the backwages and other benefits but he was not given the benefit of past service and was denied by the management the pension as the applicant was eligible on the date of his initial appointment for the enrolment as a member of the pension fund. The bank has arbitrarily fixed 20 years as pensionable service. The management knowingly did not confirm the workman in the service despite the fact that the vacancy was available and the pension benefits have been denied by the management on technical grounds as he was ignored for the purpose of pension for no fault of the workman as the management kept him temporary for a period of 10 years. It is thus prayed that the management may be directed to enrol the workman as member of the pension fund and make the contribution of fund to the trustees with retrospective effect.

3. The management in written statement has pleaded that the workman was engaged as temporary guard during the year 1974 to 1979. Later on he was sent to Mohali Branch on 26-10-1979 to work as temporary guard. He was not offered permanent appointment in the bank for the reasons that there were certain material alterations in date of birth in his military discharge certificate and military

authorities had informed the bank his correct date of birth as 1-7-38 and not 1-7-1940 and his explanation was found to be unsatisfactory so his services were dispensed with on 22-7-1981. Later on a settlement was arrived at and he was reinstated on the same job as he was holding on 27-7-1981 and later on he was given permanent appointment w.e.f. 23-10-1984. As per the SBI Pension fund rules only permanent employees are enrolled as member of the pension fund and that too from the date of confirmation, if the employee is otherwise not below the age of 18 years or above the age of 38 years from the date of confirmation which in the present case is 23-4-1985 so he can not be considered for becoming the member of the pension fund.

4. The applicant in evidence filed his affidavit Ex. W1. The management has filed the affidavit of M. L. Talwar as Ex-M1 and documents Ex. M2 to M11.

5. I have heard the parties and gone through the record of the case. The management has placed on record the appointment letter Ex-M11 dated 20-12-1984 vide which the applicant was appointed for a probation of six month w.e.f. 23-10-1984. The management also placed on record Ex. M5 the letter written from the Army to the management wherein his date of birth has been communicated as 1-7-1938. The rep. of the management has referred me to the pension rules according to which a person/employee can become the member of pension from the date from which he is confirmed in the service of the bank or from the date which he may be required to become a member of the fund under the terms and conditions of his service and as per clause 8 : 25 of the pension fund rules no employee shall be eligible to become a member of the fund if he is a member of the imperial bank of India Employees Pension and Gurantee Fund or if he is engaged in any country outside India and appointed for the service in such country and if he is below 21 years of age, if he is over 38 years of age or whose service is specially declared by the bank to be non-pensionable. In the case in hand at the time of his appointment he was above the age of 38 years and he was not eligible for becoming the member of the pension fund. His temporary service from 18-1-1974 can not be counted for his becoming the member of the pension fund as he was not confirmed in the bank's service and he was

appointed in the bank vide Ex. M11 vide which he was appointed in the service of the bank w.e.f. 23-10-1984. He was given this appointment in pursuance of the settlement Ex. M2 dated 17-12-1981 wherein it is agreed that he will be reinstated on the same job which he was holding on 27-7-1981. Thus it is clear that he was not a confirmed employee of the bank and he had already crossed the age of 38 years at the time of his confirmation in the bank's service. Thus the applicant is not entitled to any relief on this count.

6. In view of the discussions made in the earlier paras, the action of the S.B.I. Regional Office (Pb.) in denying seniority from October, 1979 and admission to pension fund to the applicant is legal and justified. The applicant is not entitled to any relief. The reference is answered accordingly. Central Govt. be informed.

Chandigarh.

S. M. GOEL, Presiding Officer

नई दिल्ली, 14 फरवरी, 2002

का.आ.849:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन. ई. रेलवे, गुवाहाटी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण गुवाहाटी, असम के पंचाट (संदर्भ संख्या 5(सी) ऑफ 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-02-2002 को प्राप्त हुआ था ।

[सं. एल-41012/163/2000-आई.आर. (बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi. the 14th February, 2002

S.O. 849.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 5(C) of 2001) of the Industrial Tribunal Guwahati, Assam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of N. E. Railway, Guwahati and their workman, which was received by the Central Government on 13-02-2002.

[No. L-41012/163/2000-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL, GUWAHATI, ASSAM

REFERENCE NO. 5(C) OF 2001

PRESENT :

Shri K. Sarma, LL.B.,
Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute
between;

The Management of N. E. Railway,
Guwahati.

Vs

The General Secy. Rail Mazdoor Union,
Guwahati.

Date of Award, 22-1-2002

AWARD

This industrial dispute has been referred to by the Govt. of India, Ministry of Labour, vide order No. L-41012/163/2000-IR(B-I) dt. 29-12-2000 under section 10 of the I.D. Act, to adjudicate the dispute arising between the management of N. E. Railway, Ghy and their workmen represented by Gen. Secretary, Rail Mazdoor Union, Guwahati on the following issue :—

“Whether the action of the N. E. Railway Guwahati in not giving the pay scale to the Watchman under Dy. COS/PNO at par those of the Engineering department as detail attach along with the same restructuring benefit is justified? If not, what relief the workmen are entitled?”

On receipt of reference, this tribunal has registered this case and issued notice to both the parties calling upon them to file their written statement/addl. written statement and documents, if any, in response to which both the parties have appeared and filed their written statement/addl. written statement and documents and also adduced oral evidence in support of their respective claims.

The workmen's case, in brief, is that all the workmen raising this industrial dispute through their union are appointed as Khalasi by the N. E. Railway, Maligaon, Guwahati which is group 'D' post of the Railway administra-

tion in the year 1982 at the scale of pay Rs. 195-232 P.M. subsequently which has been raised to Rs. 2252-4000 with other benefit attached to their service. But workmen's contention is that they have to perform duty of Watchman under Dy. Controller of Stores, Maligaon with the same pay scale, but bearing higher responsibility. Their further contention is that both Khalasi and Watchman are Group 'D' employee under Dy. Controller of Store, Maligaon but Watchman are to bear higher responsibility at same pay with that of Khalasi by Watching Railway properties even at night like the R.P.F. (Railway Protection Force) who are getting more pay than that of them. It is also contended that the watchman under Engineering Department who also perform similar nature of duty are given higher pay scale. The difference between pay scale of Khalasi and watchman under Dy. Controller of Store, Maligaon, Pandu and those are Engineering Deptt. as reflected from ext. 'B' are as follows :—

Store Watchman scale	Engineering scale.	Store Watchman scale.
	1986	
196-232	200-250	
200-250	210-270	
	1993	
750-940	775-1025	
775-1025	800-1150	
800-1150	825-1200	
	1996	
2650-4000	2750-4400	
2610-3540	2650-4000	
2550-3200	2610-3540	

Above chart shows that the watchman under Engineering Deptt. performing similar duty with that of watchman under store deptt. are given higher pay benefit than that of them. The workman have contended that as they have performed similar type of duty with those of watchman under Engineering Deptt., they should also be paid the same pay scale with that of them or they shall be allowed to perform the duty of Khalasi which bear less responsibility than that of watchman or they should be given restructuring benefit which are given to watchman of other deptt.

The managements contention is that the restructuring of pay scale of various groups of employee is done as per Railway Board Circular No. PC. III/91/CRC dtd. 27-1-93 and pay scale has also been prescribed by the Railway Board. As the Railway Administration, Maligaon has no authority whatsoever to give pay benefit to the watchman under

Dy. Controller of Store equal to that of watchman under Engineering Deptt., the matter has been referred to Railway Board vide letter No. E/170/Legal Sale/801/2000 dtd. 30-8-2000 which is still pending before the Railway Board. Of course, in the written statement the Railway Administration, Maligaon had not pacifically denied responsibility bore by the watchman under Dy. Controller of Store and that of Engineering Deptt. but stated that it is well known to the Railway Board which indicates that both the category of workmen bears similar responsibility. It is also not stated in the written statement by the Railway authority that watchman under Engineering Deptt. bears any special technical qualification which are not required on the part of the watchman and khalasi under Dy. Controller of Store for which former group of employees are entitled to higher pay scale.

From the materials on record and arguments advanced by the learned advocate for the both the parties, I find that both khalasi and watchman under Dy. Controller of Store are same category having same pay scale and watchmen under Engineering Deptt. having doing same type of duty with that of them are given higher pay benefit. The workman's grievance is that if they are not given pay scale of watchman under Engineering Deptt. They should be allowed to do the work of khalasi which bears less responsibility in the pay scale prescribed to them and there is promotional avenue in the post of khalasi with higher pay in future and in that case they have no objection. But as they are to perform the work of watchman under Dy. Controller of Store with higher responsibility without giving the equal pay benefit to those of watchmen under Engineering Deptt., it amounts to unfair labour practice and also an exploitation on the part of the management. The representative of the Railway Board has not appeared in this case nor in the issue referred to by the referring authority. has implicated the Railway Board as party. The grievances of the workman have not been denied pacifically by Railway Administration, Maligaon, but expresses their incompetency to fulfill the same which lies on the Railway Board. the Railway Administration, Maligaon has stated pacifically in their written statement that matter as to restructuring of the watchman of various Deptt. and equal pay benefit claimed by them have been referred to Railway Board and

is pending before Railway Board, under such circumstances, I find that the Railway Board is a ultimate authority to meet the grievances of the workmen. It is well settled principle of law that difference categories of workmen performing the similar nature of work with similar responsibility shall be clubbed in the same group and should be paid same pay scale and other benefit entitled to them. The principle of equal pay for equal work is applicable to all.

In view of my aforesaid discussion, I hereby direct the Railway Board to consider the grievances of the workmen and dispose the reference made by the Railway Administration. Maligaon vide letter No. E/170/Legal Sale/801/2000 dtd. 30-8-2000 within 6 months from the date of this award and workmen shall be given restructuring benefit and be given similar grade with that of watchman under Engineering Deptt. and be paid same pay scale with them or they be allowed to perform the duty of khalasi as claimed by them with promotional benefit as per their security. Management of N. F. Railway, Maligaon is also directed to take initiative in the matter with the Railway Board so that it may be disposed with the aforesaid period of 6 months.

With this direction this reference is finally disposed. Prepare an award.

K. SARMA, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ.850:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कम-लेबर-कोर्ट, चंडीगढ़ के पंचाट (संदर्भ संख्या आई.डी.नं. 186/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-02-2002 को प्राप्त हुआ था ।

[सं. एल-41012/24/99-आई.आर. (बी I)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 850.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I.D. No. 186/99) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Railway and their

workman, which was received by the Central Government on 17-02-2002.

[No. L-41012/24/99-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF SHRI S. M. GOEL,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHANDIGARH

Ref. No. I. D. No. 186/99

Uttar Railway Karamchari Union,
.. Workman.

VERSUS

Northern Railway. .. Managemntnt.

PRESENT :

For the Workman.—None.

For the Management.—P. P. Khorana.

AWARD

(Dated : 21-1-2002)

The Central Govt. Ministry of Labour in exercise of powers conferred on the under Section 10(1)(d) and Sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), vide their letter No. L-41012/24/99-IR(B-I) dated 9-9-1999 referred the following Industrial dispute to this Tribunal :—

“Whether the action of Divisional Railway Manager, Northern Railway, Ambala Cantt. in denying the following demands of Uttar Railway Karamchari Union (Regd.) Ambala Cantt is just and legal?”

2. None appears on behalf of the workman despite notice. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Govt. for want of prosecution. Central Govt. be informed.

Dated : 21-1-2002.

S. M. GOEL, Presiding Officer

नई दिल्ली, 11 फरवरी, 2002

का. आ. 851.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल शुगर इंस्टीट्यूट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 121/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-2-2002 को प्राप्त हुआ था ।

[सं. एल-42011/47/97-आई.आर. (डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 11th February, 2002

S.O. 851.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 121/98) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of National Sugar Institute and their workman, which was received by the Central Government on 11-2-2002.

[No. L-42011/47/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHI R. P. PANDEY, PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
(CUM-LABOUR COURT, SARVODYA NAGAR, KANPUR

Industrial Dispute No. 121/98

In the matter of dispute between

Sri R. K. Tiwari,
President, Experimental Sugar Factory Union
106/255 Gandhi Nagar,
Kanpur

AND

Director,
M/s. Experimental Sugar Factory,
National Sugar Institute
G. T. Road Kalyanpur,
Kanpur-208001.

AWARD

1. Central Government, Ministry of Labour, New Delhi vide its notification No. L-42011/47/97-IR(DU) dated 3-7-1998, has referred the following dispute for adjudication to this Tribunal—

2. Whether the action of the Director, National Sugar Institute, Kanpur in not paying the salary and other benefits of the post of Centrifugal Operator from 1980 to S/Sri Suresh Rajendra Prasad Shukla, Peetambar Ashok Kumar Mishra, Ganga Prasad and Sri Raja Ram is legal and justified? If not to what relief the workmen are entitled for?

The Government of India Ministry of Labour issued corrigendum-dated 13-11-1998 in the reference order dated 3-7-1998 to read name "Raja" appearing in the reference order as Raja Ram.

3. On behalf of the concerned workmen the statement of claim has been filed with the allegations that the workmen named above in the schedule of reference order were only workers working in the Experimental Sugar Factory (hereinafter referred to as ESF for the sake of brevity) under the control of National Sugar Institute, Kanpur. Originally they were appointed as Haper Mazdoor but they were discharging

the duties of Centrifugal Operator. It has been alleged that the ESF Kanpur comes within the definition of Industry, hence its employees are governed by the provisions of Industrial Disputes Act. Their wages are regulated by the recommendation of Wage Board constituted from time to time. About 100 tones of Sugar is produced by this ESF which is sold in the market. ESF is registered under Factories Act hence the provisions of Factories Act and the provisions of ESI Act also apply to these employees. The first Wage Board submitted its report in the year 1961 and its recommendations were made applicable vide notification dated 27-4-1961. Its recommendations were accepted by Government of India vide notification dated 23-2-61. Later on Second Wage Board was constituted and it submitted its recommendation in the year 1970. Its recommendations were accepted by the Government of India vide resolution dated 7-7-1970 and by the Government of Uttar Pradesh vide notification dated 27-11-80. These recommendations were made applicable to the employees of ESF also in which the present workmen are working. Subsequently the III Wage Board submitted its report in the year 1985 and its recommendations were accepted by the Government of India as well as by the State Government. The Government accepted the same vide notification dated 31-1-91. The pay and other benefits were given to the employee of Sugar Industries including the employees of the ESF. Accordingly aforesaid Sugar Wage Board placed the workmen of these industries into different categories and they were mainly categorised in unskilled, semi skilled, skilled and highly skilled. The workmen mentioned above were discharging duties of semi skilled centrifugal operators from 1-1-80 although they were being paid salary of unskilled Mazdoor. They made representation to the management for giving salary of semi skilled post of centrifugal operators but the management did not pay any heed to it. In the Second Wage Board a person holding the semi skilled post was entitled to get the pay scale of Rs. 118-2-136-3-151 and was also entitled to get retaining allowance up to 25 per cent of his salary. Similarly under the III Wage Board according to the recommendation of the III Wage Board semi skilled workman was entitled to get pay scale of Rs. 900-15-1050-20-1250 and was entitled to get 30 per cent as retaining allowance. It was clarified that during the crushing season they were getting only pay scale of mazdoor as mentioned above and in off-season they were entitled to get retaining allowance. The post of Centrifugal Operator come within the definition of semi skilled workmen and these workmen were entitled to get the aforesaid pay scale meant for semi skilled workmen but the management has failed to implement the recommendations of Wage Boards in respect of these employees although they were entitled to get the pay scale and retention allowance of the semi skilled post. The management takes the plea that National Sugar Institute is not industry and these workmen are not entitled to get the benefit of Industrial Disputes Act but that objections is untenable because ESF has been mentioned as Sugar Industry by the Government of India in the list of Sugar Factories which were kept within the purview of different wage boards for recommendation of pay of their employees from time to time. Secondly the recommendation of Wage Board made applicable to the employees of the industries and as the recommendations of the Wage Board have been made applicable to the employees of the ESF Kanpur, the employees of these ESF come within the definition of workman and are entitled to get the protection of the Industrial Disputes Act also. On the basis of these allegations the workmen have prayed that they should be given the pay scale of Rs. 118-151 according to the recommendations of 2nd Wage Board and the pay scale of Rs. 900-1250 according to the recommendations of 3rd Wage Board and they may be allowed retention allowance at the rate of 25 per cent of the pay on the basis of second recommendations of second wage board and at the rate of 30 per cent on the basis of recommendations of 3rd Wage Board. They have prayed that the management be directed to pay them salary and other consequential benefits accordingly.

4. The management has filed written statement in which they have alleged that National Sugar Institute Kanpur is a subordinate office of Ministry of Food and Consumer Affairs, Department of Sugar and Edible Oils, totally owned and controlled by Union Government. NSI provides teaching and training to the different courses like Sugar Technology, Alcohol Technology, Sugar Boiling, and Sugar Engineering

etc. It is a research oriented institute, which carry Research in Physical Chemistry, Organic Chemistry, Bio Chemistry, Agriculture Chemistry and gives advise to related with Sugar Industry, Alcohol Industry and other related industries and thus is not a Sugar Industry. The judgment of the Hon'ble High Court of Allahabad dated 11-2-1998 is annexed to the written statement, which supports their contention. It has been alleged that S/Shri Suresh and five others are seasonal workers in ESF. It has also been alleged that they had been operating centrifuged machine from time to time but were not given salary of that post because that post was not created for ESF by the Government of India, however some honorarium were paid to them for discharging duties of higher responsibilities.

5. On behalf of the workmen rejoinder has been filed in which facts alleged in the statement of claim have been reiterated.

6. Workmen have examined Ashok Kumar Mishra as WW1 and have filed documents marked Ext. W.1 to W.5. The management examined Sri L. P. Tiwari as M.W. 1 in support of its case and filed documents marked Ext. M.1 and M.2.

7. It has been contended by the management in paragraph 4 of its written statement/affidavit that National Sugar Institute is a Research Oriented Institute where research in Physical Chemistry, Organic Chemistry, Bio Chemistry, Agriculture Chemistry is carried on and it is not a sugar industry but an institute and the present claim before this tribunal under the Industrial Disputes Act is not maintainable. On the other hand it has been contended by the workmen in their rejoinder that the ESF in which the workmen of this case are working is a sugar industry and the provisions of Industrial Disputes Act fully apply to this industry as well as to the workmen. It has also been contended by them that the judgment of the Hon'ble High Court delivered by Hon'ble Mr. Justice S. N. Shroff dated 11-2-1998 on which the management has placed reliance in its written statement is not applicable to the present workmen because that case related to the regular employees of National Sugar Institute whose service conditions were regulated by Central Government Rules and Regulations made from time to time. After going through the record of the case I find force in the contention of the workmen on this point. There is no dispute about the fact that the workmen whose case is pending for decision before this court are seasonal employees of ESF. The workmen have filed report of Central Wage Board for Sugar Industries 1960 in which list of all sugar factories is given in appendix X which are to be governed by the report of Central Wage Board and which came within the definition of Sugar Industry. At serial No. 40 of the Appendix I of the aforesaid report Central Wage Board 1960, ESF situated in National Sugar Institute Kanpur has been mentioned. The Wage Board makes recommendations for the employees of the Industries. The aforesaid report relates to the employees of the sugar industries. It is admitted to both the parties that recommendations of Wage Board apply to the employees of ESF. The workmen have filed the copy of the order dated 21-5-92 Ext. W-3 which shows that the Director of the Institute appointed Mahesh Chandra as seasonal Mazdoor in the ESF and also passed an order that he will be entitled to get wages and allowances according to the report of Sugar Wage Board. It has been admitted by Sri L. P. Tiwari M.W. 1 that seasonal workmen working in ESF get wages and allowances according to the recommendations of the Sugar Wage Board. In view of evidence on record discussed above, I find that the ESF situated in National Sugar Institute, Kanpur come within the definition of Sugar Industry and its workmen and the present workmen whose cases are pending before this tribunal are workman as defined under section 2(s) of the Industrial Disputes Act, 1947. I, therefore, hold that the aforesaid judgment passed by Hon'ble High Court Allahabad in writ petition No. 15532 of 87 on 11-2-98, which relates to the regular Central Government employees of National Sugar Institute has no application so far as the present workmen are concerned as they are employed in ESF, which is a sugar industry. I therefore hold that the present workmen are workmen as defined under the Industrial Disputes Act and the provisions of Industrial Disputes Act apply to them and the claim filed by them before this tribunal is maintainable.

8. The next and the important question is to be decided in this case is whether these workmen who have brought claim before this tribunal and whose case has been referred to this tribunal are entitled to get benefit of the post of

Centrifugal Operator from 1980 or not. The evidence of Sri Ashok Kumar Mishra WW1 that all these workmen named in the reference order were appointed as daily wager in the year 1976 and they became regular mazdoor in the year 1978. He further stated became regular mazdoor in the year 1978. He further stated on oath that all the workmen whose claim is before this tribunal were discharging the duties of centrifugal operator from 1980 during the crushing season but they are being paid the salary of a mazdoor the crushing season and retaining allowance after crushing season on the pay scale of a mazdoor. The workmen in their statement of claim have pleaded this fact also. The management has not denied this fact in its written statement/affidavit. The management has rather admitted in its written statement that the work of operating centrifugal machine was taken from time to time from these workmen. Even Sri L. P. Tiwari M.W. 1 admitted that these workmen have been discharging the work of centrifugal operator but they were given salary of mazdoor only. He also admitted that they could not be given salary of Centrifugal Operator because no post of centrifugal operator was created in the ESF by the Government of India, although several times it was written by the Director of National Sugar Institute Kanpur that such post be created. He admitted that during crushing season when the ESF runs the work of centrifugal operator is carried on by the workmen who have brought cases before this tribunal. Thus it is established beyond doubt by the evidence on record that these workmen whose case has been referred to this tribunal have been discharging the work of centrifugal operator, which is a semi skilled work from 1980, but they have been paid only the pay and allowance of mazdoor and also the retention allowance of mazdoor only.

9. The workmen who are before this tribunal have also filed a copy of order dated 23-2-83 Ext. W. 1 issued by the Manager of ESF whereby all the six workmen named in the reference order were directed to operate centrifugal machine under the control of the concerned Chief Chemist. They have also filed one order dated 7-3-84 passed by the manager of the factory whereby these workmen were directed to operate centrifugal machine. It is also mentioned in that order that the job of centrifugal operation obviously involved higher responsibility. The workmen have filed appendix LXIV of Central Wage Board report of 1960, in which at serial No. 23 Centrifugal Mazdoor is mentioned as a semi skilled person. As these workmen have been discharging duty of centrifugal operator, which is a semi skilled post hence, they were entitled to get the pay scales, which was recommended by the wage board for semi skilled post. Admittedly mazdoor is a unskilled post and these persons who are discharging duty of semi skilled post are getting the salary of unskilled post which is unfair and unjust. I therefore hold that the workmen were entitled to get salary of semi skilled post of centrifugal operator from 1980 and were also entitled to get all other consequential benefits including retaining allowance and other allowances admissible under the report of Central Wage Board from time to time.

10. The workmen have pleaded in their claim statement that under the report of second wage Board a person working as semi skilled was entitled to get pay scale of Rs. 118-2-136-3-151 and retaining allowance at the rate of 25 per cent of the pay. It has also been pleaded that under the report of 3rd Wage Board semi skilled worker was entitled to get pay scale of Rs. 900-15-1050-20-1250 and retaining allowance at the rate 30 per cent of pay. As the present workmen were discharging duties of post of centrifugal operator from 1980 onwards I hold that they are entitled to get the pay scale of Rs. 118-151 plus 25 per cent retaining allowance on the basis of Second Wage Board report and the pay scale of Rs. 900-1250 and retaining allowance at the rate of 30 per cent of the pay on the basis of 3rd Wage Board Report and other consequential benefits and allowances from time to time as recommended by the Wage Boards. As they have been paid only the salary and retention allowance etc., of the post of Mazdoor they are entitled to get arrears of pay and allowance according to the above findings recorded by me in this award. The authorised representative for the management has argued that when the post of centrifugal operator have not been created in the factory by the Government of India although the request was made to the Government, these workmen cannot be given the pay scale prescribed for centrifugal operator but I do not find any force in this contention. When the management is taking work from these

workmen of the post of centrifugal operator from 1980 onwards which is a post of semi skill and higher responsibility these persons are entitled to get the salary of the semi skilled post which is of higher responsibility and they cannot be deprived from the salary which they are entitled to get while discharging duties of centrifugal operator. In B. S. Khanna versus State of Haryana 1992 Lab IC 916 (P & H) Hon'ble High Court of Punjab & Haryana has held as under—

So far as the claim of the petitioners who have been working against the posts of sub divisional officers and have been discharging the duties of these posts without any extra remuneration or the pay attached to the higher post is concerned, there is no difficulty in allowing their claim as the matter is squarely covered by the judgment of this court reported as Sewa Singh versus Punjab State Minor Irrigation (Tube wells) Corporation (1987) SLR 691 : 1987 Lab IC 1873. Obviously when an employee has been entrusted with the duties of a higher post and is required to shoulder the responsibility thereof as if he is a regular incumbent of the post, he is also entitled to the salary and other emoluments attached to the higher post, which his other counterparts are drawing only by virtue of being regular incumbents of the post. This is the precise mandate of the principle of equal pay for equal work.

11. The law laid down in the case cited above fully applies to the facts of the present case also. As these persons were discharging the duties of centrifugal operator as semi skilled worker they are entitled to get the salary and other allowance of that post as recommended by the Wage Board from time to time and accepted by the Government of India and Government of Uttar Pradesh as well from time to time.

12. The authorised representative for management has argued that these workmen were paid honorarium for discharging duties of the post of centrifugal operator hence they are not entitled to get pay of that post. After going through the record of the case I do not find any force in this contention. The management has also filed a copy of the order dated 3-8-98 Ext. M-2 which shows that honorarium have been paid not only to seasonal employees of ESF but also to the other officials of the National Sugar Institute for doing extra work during the extra hours. In these circumstances if honorarium has been paid to these employees during the tenure of their service extra work during extra hours, which cannot be considered to be wages in lieu of discharging duties of semi skilled post. In my opinion the honorarium paid to these employees as well as to other employees of National Sugar Institute is of no consequence and has nothing to do with the wages, which these workers were entitled to get under the recommendation of the Wage Board constituted from time to time.

13. In view of findings recorded above, I hold that Sri Suresh, Rajendra Prasad Shukla, Peetamber, Ashok Kumar Mishra, Ganga Prasad and Raja Ram are entitled to get the pay of the post of centrifugal operator in the pay scale Rs. 118-151 and 25 per cent retaining allowance under the recommendation of 2nd Wage Board and the pay scale of Rs. 900-1250 plus retaining allowance at the rate of 30 per cent of the pay under the recommendation of the 3rd Wage Board and other allowance as admissible from time to time from the year 1980 onwards till the aforesaid pay scale is again revised and if that pay scale is further revised they will get the salary according to the revised pay scale. The management is directed to fix their pay and allowance according to the directions given above and to pay them arrears of salary and allowances within a period of three months from the date of publication of this award in the official Gazette.

14. The record shows that Raja Ram died on 16-7-98 after the case was referred to this tribunal for adjudication hence the amount of money payable to Raja Ram shall be paid to his wife Smt. Sushila Devi.

15. Accordingly it is held that the action of the Director National Sugar Institute in not paying the salary and other benefits of the post of Centrifugal Operator from 1980 to S/Sri Suresh, Rajendra Prasad Shukla, Peetamber, Ashok Kumar Mishra, Ganga Prasad and Raja Ram is not lawful and justified and the workmen are entitled to the relief as given above.

16. Reference is decided accordingly.

R. P. PANDEY, Presiding Officer

नई दिल्ली, 12 फरवरी, 2002

का.आ. 852.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिटेण्डेंट पोस्ट ऑफिस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, अजमेर के पंचाट (संदर्भ संख्या सी आईटी आर 18/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-2-2002 को प्राप्त हुआ था।

[सं. एल-40012/261/99-आई.आर. (डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 12th February, 2002

S.O. 852.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CITR 18/99) of the Industrial Tribunal/Labour Court, Ajmer now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Senior Supdt. of Post Offices and their workman, which was received by the Central Government on 12-2-2002.

[No. L-40012/261/99-IR(DU)]

KULDIP RAI VERMA, Desk Officer

अनुबंध

न्यायालय श्रम एवं औद्योगिक न्यायाधिकरण, अजमेर (राज.)

पीठासीन अधिकारी : राजेन्द्र सिंह राठौड़, आरएचजेएस

सी.आई.टी.आर. 18/99

[रेफरेंस नं. एल 40012/261/99-आई आर (डीयू)]

दिनांक 18-11-99]

श्री मल्लासिंह रावत पुत्र श्री शिव सिंह रावत, निवासी नेडलिया
पी.ओ. काम वाया पुष्कर जिला अजमेर —प्रार्थी

बनाम

डी सीनियर सुपरिटेण्डेंट पोस्ट ऑफिस अजमेर डिवीजन

—अप्रार्थी

उपस्थित : श्री शमशेर सिंह, विद्वान अधिवक्ता, प्रार्थी

: अप्रार्थी की ओर से कोई उपस्थित नहीं।

दिनांक : 17-1-2002

अवार्ड

1. केन्द्र सरकार द्वारा यह विवाद वास्ते अधि निर्णयार्थ इस न्यायाधिकरण को प्राप्त हुआ :

“आया प्रवर अधीक्षक डाकघर अजमेर द्वारा अ. वि. एजेंट (आचरण एवं सेवा नियमावली) 1964 के तहत पारित आदेश दि. 16-9-98 के जरिये श्री मल्ला सिंह, शाखा डाकपाल का सेवा से हटाया जाना तथा विधिक एवं न्यायोचित

है यदि नहीं तो वह किम प्रकार राहत पाने का अधिकारी है”।

2. प्रार्थी ने अपने स्टेटमेंट ऑफ क्लेम्स में बताया है कि वह अवि शाखा डाकपाल कानस के पद पर 8-4-81 से निरन्तर कार्यरत था। दि. 6-2-98 को अप्रार्थी ने एक चार्ज शीट प्रार्थी को दी जिसमें लगे हुए आरोपों को प्रार्थी ने स्वीकार नहीं किया। इस पर विभागीय जांच की गयी जिसमें श्री बी.एस.मीणा को विभाग की ओर से प्रेजेंटिंग ऑफिसर तथा जांच के लिए जांच अधिकारी श्री ओ.पी.शर्मा को नियुक्त किया गया। प्रार्थी के विरुद्ध जो आरोप लगाये गये उनमें (1) दि. 16-1-98 को वक्त मुआयना बजरिये अधीक्षक डाकघर अजमेर करने पर रु. 391/- सरकारी नकदी कम पायी गयी तथा उक्त रकम को बहुकम श्री मान् अधीक्षक दि. 17-1-98 को पुष्कर डाकघर में जमा कराया गया (2) प्रार्थी ने अपने डाकघर के बी.ओ.खेली अकाउंट 7-1-98 से 15-1-98 तक डाकघर लेखा प्रतिवेदन नहीं भरा जिसे वक्त मुआयना भरवाया गया (3) प्रार्थी ने 14-9-96 को बचत खाता सं. 101 3068 में जमा कराने हेतु खाता धारक से रु. 400/- प्राप्त कर लिये परन्तु उक्त रकम को सरकारी हिसाब में नहीं लिया तथा प्रकरण प्रकाश में आने पर 10-12-97 को रु. 400/- यू.सी.आर. में जमा कराया इस प्रकार प्रार्थी ने सत्यनिष्ठा का उल्लंघन किया।

जांच अधिकारी द्वारा प्रस्तुत जांच रिपोर्ट पर कार्यवाही करते हुए दि. 16-9-98 को प्रार्थी की सेवायें समाप्त कर देने का आदेश पारित किया गया।

प्रार्थी ने जांच कार्यवाही, अपनायी गयी प्रक्रिया एवं आरोपों के संबंध में भी अपनी आपत्तियां व्यक्त की हैं। इन आपत्तियों के अन्तर्गत प्रार्थी ने बताया है कि (ए) अवि एजेंट (आचरण सेवा नियमावली (1964 के प्रावधानान्तर्गत प्रवर अधीक्षक को जांच अधिकारी नियुक्त करने का अधिकार प्राप्त नहीं था इस कारण संपूर्ण जांच एबइनी शियो इन-ऑपरेटिव है (बी) उक्त नियमों के अन्तर्गत ऐसा कोई प्रावधान नहीं है कि प्रेजेंटिंग ऑफिसर को नोमिनेट किया जा सकता हो. बल्कि एक्जीक्यूटिव आदेश के जरिये केवल नियुक्ति की जा सकती है न कि नोमिनेशन इस कारण श्री बी.एस.मीणा प्रेजेंटिंग ऑफिसर का नोमिनेशन कानूनन गलत है (सी) प्रार्थी के विरुद्ध चार्ज में लगाये गये आरोप की रु. 391/- सरकारी नकदी निरीक्षण के समय कम पायी गयी व जिस आरोप को जांच अधिकारी ने साबित माना है गलत है क्योंकि बिना किसी शहादत व बुनियाद के इसे साबित माना जाना गैर कानूनी है। जांच अधिकारी ने प्रवर अधीक्षक श्री आर.जे.वर्मा के बयान नहीं लिये व इस कारण उनके समक्ष कोई साक्ष्य नहीं थी। जांच में श्री पी.आर. राठौड़ के बयान रिकार्ड किये गये थे जो वक्त मुआयना अधीक्षक के साथ मौजूद थे उन्होंने भी अपने बयानों में यह कहीं नहीं कहा कि रु. 391 कम पाये गये तथा अधीक्षक ने प्रार्थी जो उक्त रकम जमा कराने के आदेश दिये व प्रार्थी

द्वारा रकम जमा नहीं करायी गयी। प्रार्थी ने उक्त रकम दि. 16-1-98 को ही जमा करा दी थी। (डी) इसी प्रकार आरोप सं. 2 को भी बिना किसी शहादत साबित मान लेना गैर कानूनी व मनमानी पूर्ण है। इंस्पेक्टिंग ऑफिसर श्री आर.जे. वर्मा ने इंस्पेक्टिंग मीमो अथवा डाकघर लेखा में ऐसा कोई इंद्राज नहीं किया कि 7-1-98 से 15-1-98 तक की प्रविष्टियां नहीं थी तथा इस बारे में आर.जे.वर्मा व पी.आर. राठौड़ की कोई शहादत भी जांच अधिकारी के समक्ष नहीं हुई जांच अधिकारी ने मनमाने तरीके से अपनी रिपोर्ट दे दी। (ई) जांच अधिकारी के समक्ष यह तथ्य बिल्कुल स्पष्ट हो गया था कि प्रार्थी को जैसे ही मालूम हुआ कि 400/- रु. जमा नहीं हो सके है तो प्रार्थी ने तुरन्त ही 10-12-97 को उक्त रकम जमा करा दी एवं तदुपरांत प्रार्थी को निरन्तर सेवा में बने रहना दिया गया था इस प्रकार प्रार्थी की उक्त भूल को अप्रार्थीगण द्वारा कंडोन कर दिया गया।

(एफ) श्री जे.आर.वर्मा द्वारा 16-1-98 को निरीक्षण किया गया तथा वे एक प्रकार मे चश्मदोद गवाह के साथ-साथ हितबद्ध व्यक्ति के रूप में तथा उनके द्वारा ही शिकायत की गयी थी। इस कारण यह बिल्कुल अनुचित था कि श्री जे.आर. वर्मा द्वारा इस प्रकरण का निस्तारण किया जाता परन्तु श्री वर्मा ने अपने पद का दुरुपयोग करते हुए एवं जांच कार्यवाही को मैलाफाईडेली प्रभावित करते हुए प्रार्थी के विरुद्ध सेवा मुक्ति आदेश पारित कर दिया।

प्रार्थी का निवेदन है कि आक्षेपित आदेश 16-1-98 को अवधिक घोषित कर निरस्त किया जावे एवं उसे नौकरी पर पुनः बहाल करते हुए बैंक वेजेज का भुगतान कराने का आदेश पारित किया जाये। प्रार्थी मल्लामिह ने स्वयं का शपथ पत्र भी पेश किया है।

3. अप्रार्थी पक्ष को जरिये रजिस्ट्री 5-5-2000 प्रार्थी के क्लेम सूचना व नोटिस भेजा गया परन्तु अप्रार्थी की ओर से 27-3-2001 तक भी कोई उपस्थित नहीं हुआ। अतः आदेश 27-3-2001 द्वारा अप्रार्थी के विरुद्ध एक तरफा कार्यवाही अमल में लाये जाने का आदेश दिया गया।

4. अप्रार्थी द्वारा इस विवाद न्याय निर्णायन की समुचित सुनवाई व इसके लिए निर्धारित प्रक्रिया में किसी भी प्रकार से भाग न लेने के कारण आक्षेपित घरेलू जांच कार्यवाही व सेवा मुक्ति आदेश 16-1-98 के संदर्भ में प्रार्थी ने जो अभिकथन अपने स्टेटमेंट ऑफ क्लेम्स में किया है उसे न मानने का कोई कारण सामने नहीं आ पाता है ऐसी परिस्थिति में आक्षेपित आदेश 16-1-98 खारिज किये जाने योग्य है तथा प्रार्थी द्वारा चाहा गया अनुतोष जिसमें सेवा बहाली एवं बैंक वेजेज शामिल है, भी स्वीकृत किये जाने योग्य है।

अर्वाइड आज दि. 18-1-2002 को लिखाया जाकर खुले न्यायालय में सुनाया गया। अर्वाइड की प्रति नियमानुसार राज्य सरकार को वास्ते प्रकाशनार्थ प्रेषित किया जावे।

राजेन्द्र सिंह राठौड़, न्यायाधीश

नई दिल्ली, 12 फरवरी, 2002

का.आ. 853.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.ए.ओ., पी.एम.आई., एयर फ़ोर्स स्टेशन के प्रबंधन के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कालकाता के पंचाट (संदर्भ संख्या 4/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-2-2002 को प्राप्त हुआ था।

[सं.एल-14012/29/97-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 12th February, 2002

S.O. 853.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/98) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.A.O., P.S.I., Air Force Station and their workman, which was received by the Central Government on 12-2-2002.

[No. L-14012/29/97-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT KOLKATA

Reference No. 04 of 1998

PARTIES :

Employers in relation to the management of C.A.O.,
P.S.I., Air Force Station, Kalaikunda.

AND

Their workman.

PRESENT :

Mr. Justice Bharat Prasad Sharma, Presiding Officer.

APPEARANCE :

On behalf of Management : Mr. K. Chatterjee, Advocate.

On behalf of Workman : Mr. M. Dutta, Advocate.

STATE : West Bengal.

AWARD

By Order No. L-14012/29/97-IR(DU) dated 28-01-1998 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Chief Administrative Officer of President Service Institute, Air Force Station, Kalaikunda in terminating the services of Srimati Usha Aich with effect from 11-02-97 is justified? If so to what relief the workman is entitled to?"

2. The present reference arises out of the industrial dispute raised by Mrs. Usha Aich, a Clerk of the establishment within the jurisdiction of SEQ 16/3, Air Field Kalaikunda. The workman concerned was dismissed from service with effect from 11th February, 1997 by the Group Captain-cum-Administrator of the President Service Institute, Air Force Station, Kalaikunda by order dated 11th February, 1997.

3. In the written statement filed by the workman it is stated that she was appointed as PSI Clerk under the management with effect from 21-03-1975 and since then she was discharging

her duty with full satisfaction of her superiors. It is further stated that the said PSI is a non-public fund institution governed by the rules and regulations of the Air Force Head Quarters, New Delhi. It is also further stated that the PSI runs various ventures like Dairy Farm, Soda Factory, Bakery and Gardening etc. and employs about 60 employees. According to the workman there are some other non-public fund institute also like Air Force Canteen, Officers' Mess and Air Force School etc., apart from co-operative store. It is also further stated that in the month of January, 1997 the workman had brought to the notice of the Administrator some irregularities in connection with issue of sum/rum card to the defence personnel/ex-servicemen, but the management instead of taking any action or making any enquiry in the matter transferred her by a letter dated 3rd February, 1997 to the Education Section, which is not a non-public fund, but fully a government office. It is further stated that on receipt of the transfer letter the workman communicated to the management by letter dated 3rd February, 1997 that her transfer to Education Section was not in consonance with the terms of her employment, because her service conditions were different from that of the Education Section. On receipt of this letter of the workman the management again asked her to join the Air Force School as a Clerk and all of a sudden in a very unceremonious manner issued a show cause notice by a letter dated 06-02-1997 against her alleging that she had refused to report to the Education Section on transfer. It is further stated that by a letter dated 7th February, 1997 she replied to the said show cause notice clarifying her stand in the matter and stating that she never refused to go to Education Section for work, but the transfer was not according to norms. Thereafter the management issued a letter dated 10th February, 1997 asking her to report to Education Section at once and without giving any opportunity to her, terminated her service by a letter delivered to her on 11-02-1997 in spite of the fact that she was ready to join the said post as per instruction of the management. It is, therefore, stated that since the workman was a permanent staff under the management with 22 years of clean and meritorious service, she was removed from service in most illegal and unceremonious manner. Therefore, it is stated that the action of the management in terminating her service amounts to 'retrenchment' within the meaning of Section 2(cc) of the Industrial Disputes Act, 1947. It is stated that this removal from service or retrenchment had taken effect without payment of any retrenchment compensation or retrenchment notice as envisaged in Section 25F of the Industrial Disputes Act, 1947, and therefore, the action of the management in terminating her service is invalid, inoperative and void and she should be deemed to have continued in service. It is also stated that after the retrenchment, the workman by a letter dated 12-02-1997 applied to the authority requesting them to reinstate her in service, but it went in vain. Then the workman by a letter dated 18-02-1997 raised a dispute before the A.L.C.(C), Calcutta and thereafter the conciliation proceedings were held, but it failed and the failure report was sent to the Ministry and this reference was made.

4. A written statement has also been filed on behalf of the management. It has been stated on behalf of the management that the reference in question is without jurisdiction and based on misconceived interpretation and erroneous understanding of the provision of law. It is also alleged that the dispute is ill-conceived and is not maintainable and is not actually an industrial dispute. It is further stated that the PSI is a non-public fund organisation promoted by the personnel of the Air Force working at Kalaikunda Air Field, Midnapore and is managed by the Chief Administrative Officer, Air Force Station, Kalaikunda and all the funds for running the said organisation is made out of the subscription raised from the personnel working at the said Air Field and no fund is received from the Central Government. Therefore, the organisation is not related to the Central Government. It is also further stated that PSI has been promoted for doing some welfare activities for the Air Force personnel and their family members and it has been engaged in supply of dairy and bakery products and other different items on non-profitable basis. It is also stated that the organisation is also engaged in running social and cultural activities and also in arranging primary level education of the children of the Air Force personnel of the Kalaikunda Air Field. It is also stated that the Chief Administrative Officer of Kalaikunda looks after the functioning of the said PSI as its head. It is stated that the Air Force School has a small office situated within the premise of the Station and Education Section and is a part of the said PSI and is also managed by the Chief Administrative Officer, Air Force Station, Kalaikunda. In

this context it is stated that this PSI is neither a branch of like organisation in any other Air Force Station, nor it has any branch in any other station and functions purely within the campus of the Kalaikunda Air Force Station. It is stated that the service of the persons working in the said PSI organisation can be utilised for any part of the said PSI and is inter-transferable for doing similar job in any part of the said PSI. It is also stated that the person raising the present dispute was engaged in service of the PSI for doing clerical job and through a letter dated 3rd February, 1997 of the management she was transferred due to exigencies to the Air Force School Office for doing clerical job there. But, in spite of repeated reminders, she did not join the Air Force School and for non-compliance of the order of the management she was asked to show cause by letter dated 06-02-1997 and the matter was enquired about and she flatly refused to join the Air Force School. So, the management had no alternative than to terminate her service from the organisation. It is stated that the organisation is not an industry within the meaning of the Industrial Disputes Act, 1947 as it is not carrying on any industry, nor the person raising the instant dispute is a workman within the meaning of the Industrial Disputes Act, and therefore, the industrial dispute does not exist. In this view of the matter it is stated that the Central Government cannot be the appropriate government in this case within the meaning of Section 2(a)(i) of the Industrial Disputes Act, 1947, because the activities of the PSI are not carried on by or under the authority of the Central Government, nor it is specified in this behalf by the Central Government as controlled industry and therefore, the A.L.C.(C) had also no jurisdiction to entertain the instant dispute and the Central Government has also no jurisdiction to make this reference. It is further stated that so far as the facts are concerned, same are admitted, but actually the transfer of the workman was according to the rules and was made by the management in proper manner, but when she refused to carry out the transfer order and expressed adamant attitude, she was served with a show cause notice. It is stated that on receipt of her explanation dated 3rd February, 1997 she was called upon to explain her conduct and when it was not found satisfactory by the Administrative Officer, the services of the workman were terminated, treating it as an act of gross indiscipline and misbehaviour. It is, therefore, submitted that the present dispute is not fit to be considered and the workman concerned is not entitled to any relief whatsoever.

5. Subsequently, a rejoinder is also filed on behalf of the workman in which some of the statements and comments made in the written statement of the management is challenged and disputed.

6. So far as the evidence is concerned, both the parties have led oral evidence and have also placed some documents on record which have been admitted and marked exhibits in the case. Ext. W-1 is the appointment letter dated 24-03-1975. Ext. W-2 is the transfer order dated 03-02-1997. Ext. W-3 is the letter of the workman dated 03-02-1997. Ext. W-4 is the show cause notice dated 06-02-1997. Ext. W-5 is the reply to the show cause dated 06-02-1997. Ext. W-6 is the letter of the management dated 10-02-1997 directing the workman to report to Education Deptt. for clerical work by noon that day, failing which, her service will be terminated. Ext. W-7 is the order issued by the management to the workman concerned intimating that her service has been terminated with effect from the same day. Ext. W-8 is the memorandum of appeal filed before the Air Officer Commanding Officer, No. 5 Wing, Air Force Station, Kalaikunda. Ext. W-9 is the letter addressed to the A.L.C.(C), Calcutta raising the dispute in the matter. Ext. W-10 is the letter by which the terms and conditions of service of non-public fund employees, other than canteen and school, were notified. Ext. W-11 is the paper containing terms and conditions of service of non-public fund employees, other than A.F. canteen.

7. On the other hand, so far as the management is concerned, Ext. M-1 is the transfer order dated 03-02-1997. Ext. M-2 is the letter addressed to the Air Force Commanding Officer by the workman on receipt of the transfer order seeking clarification in the matter and asking for proper court of enquiry. Ext. M-3 is the show cause notice dated 06-02-1997. Ext. M-4 is the letter dated 10-02-1997 intimating the workman to report on duty as transferred by noon that day. Ext. M-5 is the order dated 11-02-1997 terminating the service of the workman with effect from that date.

8. So far as the oral evidence is concerned, the concerned workman, Usha Aich has examined herself as WW-1. She has

stated that she was appointed as a Clerk on 21-03-1975 in the PSI at Kalaikunda which is run by non-public fund and caters to the welfare of the Air Force personnel by arranging dairy, bus, bakery and other services, including education. She further stated that PSI is controlled by Air Head Quarters, New Delhi and this organisation has no concern with the Air Force personnel. According to her, her services were terminated on 11-02-1997 and she had received an order to this effect on that date. Her transfer was made to the Air Force Education Section, which is not part and parcel of PSI and was under the control of the Government of India. In this regard she sought clarification by her letter dated 03-02-1997 and on 06-02-1997 she received a show cause notice from the management and then on 07-02-1997 she sent a reply and again on 10-02-1997 she was directed to join the Education Section after handingover the charge to another person and accordingly she made-over charge to him, but on 11-02-1997 she received the termination order. It is stated by her that she had never intimated the management that she was not willing to carry out the orders of transfer and she actually ready to work anywhere, if posted. She had also stated that no chargesheet was issued against her, nor any enquiry was held before termination of her service. She also further stated that neither any retrenchment compensation was paid, nor any notice to this effect was given to her. She also stated that after her termination, she was not working anywhere. So, she has prayed for her reinstatement with back wages. In her cross-examination, she has stated that she had simply sought for clarification of the transfer order and she had also not sent any reply to the notice dated 10-02-1997. She also further stated that on 11-02-1997 when she went to join the place of her posting, termination notice was handed over to her. She stated that the notice dated 10-02-1997 was handed over to her on the same day at about 11 A.M. and so she could not handover charge and join her new assignment in time. It was because she was handling cash and she had to make-over charge of the cash also and she had informed the management about it.

9. One Roananki Prakash Rao who happens to be the Administrative Officer of the Air Force Station, Kalaikunda has been examined as MW-1 on behalf of the management. He has stated that he happens to be the Officer incharge of PSI at Kalaikunda and that PSI is a non-public fund organisation and caters to the welfare of the Air Force personnel by running dairy, bus, bakery and providing other services, including school. He further stated that Government of India does not pay anything for maintenance and upkeep of this organisation and the capital is provided by the Air Force personnel. This organisation is not a profit making organisation and it has no branch anywhere in India. He also stated that this organisation is not carried on by or under the authority of the Central Government. He further stated that the PSI runs a school also which is known as Air Force School. According to him, the workman concerned was appointed as a Clerk of the PSI in 1975 and on 03-02-1997 she was transferred to Education Section of the Air Force Station as a Clerk. According to him the Education Section of the Air Force is entirely different from the PSI and it has neither any connection, nor any concern with PSI. He also further stated that the Education Section of the Air Force is under the direct control of the Air Force and so the staff working in the Education Section are employees of the Government of India. The witness has also further stated that the said Air Force School and the PSI are the same. He further stated that the Chief Administrative Officer looks after the Air Force as well as the Air Force School and Education Section of Air Force is not looked after by PSI as it happens to be part and parcel of Air Force. He also further stated that the Chief Administrative Officer of the Air Force and the Chief Administrative Office of the PSI is the same person. It is also stated that even though the workman did not join on transfer, she was given further chance to join, but even then she did not join and therefore, her service was rightly terminated. He has stated in his cross-examination that terms and conditions concerning services of non-public fund employees of Kalaikunda Air Force are framed by Air Commodore, Joint Director of Accounts and Air Officer Incharge of Administration. He admitted the notification in this regard, which is marked Ext. W-11 and admitted that the services of the concerned workman as also governed by these service conditions. He has further admitted that the management did not comply with the procedure laid down in Ext. W-11 before terminating the service of the workman, because it was not necessary. He has also further stated that there is no paper to show that Air Force School or any

school is managed by PSI and also stated that there is no other school in the Air Force Station at Kalaikunda, except the school mentioned above. In this connection, it is necessary to note that this witness, MW-1 has stated that so far as the Education Section is concerned, it is under the direct control of the Air Force and it is quite distinct from PSI with which it has no concern and therefore the staff working in the Education Section are employees of the Government of India. On the other hand, it is stated that PSI is a non-public fund organisation and it is not a concern of the Government of India.

10. In this view of the matter, it has been contended on behalf of the management that PSI is not an industry to be controlled or guided by the Government of India and therefore, the Government of India has no control over it and it cannot be treated as appropriate government in the matter of making the present reference. In this connection it may be noted that so far as the definition of 'industry' is concerned, it is very wide. It is not necessary that an organisation or an institution creating or producing some material object should be treated as industry; rather, an organisation or institution producing service to be purchased by others is also an industry. The test of the factor to control is as to how the organisation is run. It becomes admitted from the evidence on record that though the organisation is not directly under the Government of India as such, it is controlled by the Chief Administrative Officer of the Air Force Station himself and it is also for the benefit of the personnel of the Air Force Station. Therefore, it could not have an independent entity to be treated outside the jurisdiction of the Central Government for the purpose of control in the matter of industrial dispute. It could not be treated as within the jurisdiction of the State Government also because it is under the control of the Chief Administrative Officer of the Air Force Station which happens to be an wing of the Central Government. Therefore, it is not correct to say that the Government of India in this case is not the appropriate Government for the purpose of making the reference.

11. So far as the termination of the workman is concerned, it is plain and clear that she was employed as a Clerk by the PSI and after putting in service for 22 years she was transferred to Education Section. It has been clearly stated that Education Section is different from PSI and it is admitted by MW-1 that whereas Education Section is directly under the control of the Air Force, PSI is a different entity. Therefore, when she was transferred all on a sudden to Education Section, she raised a pertinent question whether she could be transferred to Education Section, which was under the direct control of the Air Force. In this context the management could have clearly explained the circumstances to her, but nothing of the kind was done; rather, she was issued a show cause. Thereafter she was given a stern warning by letter dated 10-02-1997, Ext. W-6 directing her to join by noon of 10-02-1997 itself. It is strange that when the letter was issued on 10-02-1997 and according to the workman, VW-1 she received it at about 11 A.M. that day, she was asked to join on the same day by noon on that day, because she was dealing with cash also and she had to make-over charge of the cash to her successor. It is also pertinent to note that she did not give any reply to this letter Ext. W-6 refusing to join and she was also not given any opportunity to explain anything by holding enquiry and on the very next day she was dismissed from service by order dated 11-02-1997, Ext. W-7. It is, therefore, clear that there was no departmental enquiry of any kind in this matter and the termination was also without any notice or compensation as required under Section 25F of the Industrial Disputes Act, 1947.

12. It has been stated on behalf of the management that the workman was bound by the terms and conditions of the rules framed in this regard, Ext. W-11. A perusal of this document, Ext. W-11 shows that detailed instructions in various matters have been given in it, but nowhere there is any provision for transfer of the employees. Therefore, there is no material to show that she had not acted as per the terms and conditions of service as laid down by the management. On the other hand, Paragraph-19 of the terms and conditions, Ext. W-11 lays down the procedure before dealing with a case of misconduct, which requires that the employee is to be served with a chargesheet clearly stating imputation of misconduct against him and calling upon him/her to show cause as to why one or more of the punishments, included in this rules should not be awarded to him/her and reply to

the chargesheet, if any is to be duly considered by the disciplinary authority.

13. It is pertinent to note here that any action taken by the competent authority, either in quasi judicial or in administrative capacity, has to adhere to the rules of the principles of natural justice as held in *Union of India v. N. Singh* [1970-I-LLJ-10] that the main aim of the rule of natural justice is to secure justice or, to put in negatively, to prevent miscarriage of justice. These rules operate in the areas not covered by law validly made or expressly excluded. It has been held by the High Courts from time to time that the principles of natural justice would apply unless the employer should justify its exclusion on given special and exceptional exigencies. It has been observed by their Lordships of the Hon'ble Supreme Court in the case of *D. K. Yadav v. J.M.A. Industries Ltd.* [1993-II-LLJ-696] that the cardinal point that has to be borne in mind in every case is whether the person concerned should have reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is further held that it is not so much to act judicially, but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words, the application of the principles of natural justice that no man should be condemned unheard to prevent the authority to act arbitrarily affecting the rights of the concerned person. It has also been held that it is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/her an opportunity of putting forward his/her case. The order involving civil consequence must be made consistently with the rules of natural justice.

14. In this connection, it has been stated on behalf of the management that the workman concerned was personally heard by the management. But, neither there is any para to show that any chargesheet was issued to her before taking a decision to remove her from service nor there is any evidence available relating to any enquiry of whatever nature. Therefore it is clear that the termination of service of this workman was made in arbitrary manner and without adhering to the rules of the management itself as admitted by MW-1 also. Such a termination, therefore, is illegal and it cannot be justified in any manner.

15. In this view of the matter, the termination order of the management issued against the workman, Usha Aich, on 11-02-1997 is hereby quashed. The workman is ordered to be reinstated in service with full back wages and consequential benefit, if any.

B. P. SHARMA, Presiding Officer

Dated, Kolkata, the 4th February, 2002

नई दिल्ली, 15 फरवरी, 2002

का.आ. 854.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17के अनुसरण में, केन्द्रीय सरकार सी.पी.डब्ल्यू.डी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-02 को प्राप्त हुआ था।

[मं.एल-42012/240/98-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 854.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government

Industrial Tribunal|Labour Court Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CPWD and their workman, which was received by the Central Government on 15-2-2002.

[No. L-42012|240|98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

Shri B. G. SAXENA, Presiding Officer
REFERENCE NO. CGIT 139|2000

Central Public Works Department

AND

Shri Manoj Ishwarlal Dogore

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by Clause (d) of Sub section (1) and Sub section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-42012|240|98|IR(DU) dated 06-05-99 on the following schedule :—

SCHEDULE

“Whether the action of the management of Central Public Department, Nagpur through it's Executive Engineer, CPWD Divn. I, Nagpur in terminating the services of Sh. Manoj Ishwarlal Dogore is legal and justified? If not, to what relief the said workman is entitled?”

The workman Manoj Ishwarlal Dogore has submitted Statement of Claim on 23-08-99. He has mentioned in the claim that he was working as Sweeper|Sewerman from 1983 to May, 1992 in CPWD, Nagpur. After 1992 the CPWD engaged contractor and he was working with the contractor.

In March, 97 Bhimrao Kaosiya, Sewerman had retired but CPWD did not appoint him in his vacancy.

He was again appointed on 23-07-99 but his service has been terminated w.e.f. 26-09-97. His termination is illegal. He has

claimed reinstatement from 26-09-97 with full backwages. The CPWD contested the case and mentioned in the Written Statement that the workman Manoj I. Dogore is not the employee of CPWD, Nagpur. His service was therefore not terminated by the department. He was given the work of cleaning the chocked- S.W. Pipeline and manholes on jobrate basis. He was paid Rs. 2505 for completing the work. When the work was over he was not called for any further work. He had worked from July, 1997 to Sep. 1997 i.e. for 2 months. He is not entitled to any relief.

The workman has submitted affidavit of Krishnaji Ashtikar but this witness was discharged on 21-05-01. The statement of Manoj I. Dogore was recorded.

From the side of management the statement of Gagan Prakash Bansal was recorded. The parties have also filed their documents and written Arguments.

I have considered the entire oral and documentary evidence on record. In cross examination the witness Manoj I. Dogore has stated that he was getting regular salary. The workman Manoj I. Dogore has not submitted any document to show that he was the regular employee of CPWD, Nagpur. He has also not submitted any document to show that he was getting regular pay. In the above circumstances his statement that he was the regular employee of CPWD, is false.

The Executive Engineer, G. P. Bansal of CPWD stated Manoj I. Dogore had worked on contract basis. He was paid when he completed the work. The final bill was paid to him according to the work done and in terms and conditions of the contract.

The workman has submitted document W-1 that he worked from Dec. 88 to 6th May, 92. This document shows that Manoj I. Dogore had long gaps. In Dec. 88 he worked for 23 days. In 1989 he did not work from 17-08-89 to 30-09-89. He also did not work from 24-11-89 to 30-11-89. In the month of Nov. 89 he worked for 7 days.

In 1990 also he did not work regularly and had gaps in the working duration. From 28-10-90 to 19-11-90 he did not work. In 1991 also he did not work from 15-01-91 to 21-01-91. In April, 91 he worked for 15 days. In Sep., 91 he worked for 6 days. In Oct., 91 he worked for 5 days. In Nov., 91 he worked for 20 days. In Dec., 91 he worked for 14 days. Thus the document submitted

by the workman shows that he was not working continuously for 240 days in any year from Dec, 88 to May, 92. The receipt dated 14-09-88 shows that he was paid Rs. 120 for cleaning the Sewer. He worked only for 4 days. Receipt dated 19-11-90 of Rs. 550 also shows that he was paid for helping the Sewerman and another receipt dated : 06-02-91 shows that he was paid Rs. 240. These receipts show that he was paid only on the basis of work done by him.

Another receipt filed by the workman W-6 dated 05-02-97 shows that he was paid on the basis of work done for cleaning of man-holes and Sewer lines. He was paid Rs. 2720 for cleaning 47 manholes and 370 mts. Sewer-line. The receipt dated 01-09-97 also shows that Manoj Dogore was paid Rs. 2505 for providing labour for cleaning of choked S.W. Pipeline. The work was done by him in one month. This document theretore shows that Manoj I. Dogore was supplying labour for cleaning S.W. Pipelines.

In the above circumstances the workman Manoj I. Dogore was not the regular employee of the CPWD. He was not appointed as Sweeper by the CPWD department. He was therefore not terminated from the service. He worked on contract basis and for each type of work he settled the terms and conditions for cleaning the manholes and the S.W. pipelines when they were choked. As Manoj I. Dogore was not the employee of the CPWD, he is not entitled to any relief claimed by him.

ORDER

Manoj I. Dogore was not the employee of Central Public Works Department, Nagpur. He was neither appointed as Sweeper nor his service was terminated.

He is not entitled to any relief claimed by him.

The reference is answered accordingly.
Dated 10-1-2002.

B. G. SAXENA, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ. 855.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर ऑफ सप्लायर्स एण्ड डिस्पोजल्स डिपार्टमेंटल कैंटीन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 541/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[सं. एल-42012/87/98-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 855.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 541/2001) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Director of Supplies and Disposals Departmental Canteen and their workman, which was received by the Central Government on 15-2-2002.

[No. L-42012/87/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 31st December, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

INDUSTRIAL DISPUTE NO. 541/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 147/98)
[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri A. Marimuthu and the Management of the Director of Supplies and Disposals, Chennai.]

BETWEEN

Sri A. Marimuthu : I Party|Workman.

AND

The Director of Supplies and Disposals,
Shastri Bhawan Staff Canteen, Chennai : II Party|
Management.

APPEARANCES :

For the Workman : Sri S. Ayyathurai, Advocates.

For the Management : Sri K. Rajendran, Sr. CGSC.

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-42012/87/98-IR(DU) dated 30-10-1998/13-11-1998.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 147/98. When the matter was pending enquiry in that Tribunal, the Govt. of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 541/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal with a direction to appear before this Tribunal on 12-3-2001. On receipt of notice from this Tribunal, counsel on either side present with their respective parties and prosecuted this case further.

When the matter came up before me for final hearing on 28-12-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on record, oral evidence let in on the side of the I Party|Workman and documentary

evidence let in on either side, upon perusing the written arguments filed by the learned counsel for the I Party/Workman and this matter having stood till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Government for adjudication by this Tribunal is as follows :—

"Whether the termination of Shri A. Marimuthu by the Governing Body of Director of Supplies and Disposals Departmental Canteen is legal and justified? If not what relief he is entitled to?"

2. The averments in the Claim Statement filed by the I Party/Workman Sri A. Marimuthu are briefly as follows:—

The I Party/Workman Sri A. Marimuthu (hereinafter referred to as Petitioner) was appointed as a casual labourer from the year 1965 in the staff canteen called Shastri Bhavan Staff Co-operative Catering Ltd. and he was paid daily wages at the rate of Rs. 8 per day. Later it was raised to Rs. 12 per day. He was doing the works of permanent nature as Assistant Cook. He was appointed against permanent vacancy. After some time, he demanded the wages to be raised to Rs. 15 per day and made many representations to the authorities of the canteen. The then management got engaged over the demand of the Petitioner for increasing wages and terminated his service. So, he raised an dispute which was referred to the Principal Labour Court, Madras and was taken on file as I.D. No. 1012/88. When the matter was pending before that Court, the Respondent/Management illegally confirmed one Mr. Selvaraj, who is junior to the Petitioner in service in order to confirm the said Selvaraj, the services of the petitioner was terminated. Before the Labour Court, the Respondent/Management agreed to reinstate the Petitioner in service with continuity of service but without back wages. Since the Petitioner also consented for the same, an award dated 25-6-1993 was passed by the Principal Labour Court, Chennai. In the meantime, the Corporate Canteen was taken over as departmental canteen by the Govt. of India, Department of Supply and Management of the canteen was entrusted to the Director of Supplies and Disposals, Shastri Bhavan. The employees were absorbed in the Department of Supplies. The Petitioner was reinstated but treated as casual labourer and was paid Rs. 25 per day. Since the Govt. of Tamil Nadu revised the rate of daily wages payable to the casual labourers to Rs. 43 w.e.f. 1-4-1993, the Petitioner's salary was revised and was paid Rs. 43 per day from 1-4-1993. The Petitioner made representation for the confirmation of the Petitioner in service. While he was waiting for the favourable reply, the Manager Mr. Natarajan did not permit the Petitioner to work in the Respondent Canteen from 3-11-1994 onwards and prevented the Petitioner from signing the attendance register saying that there was no work for him. The Petitioner approached the Respondent in person and requested for reinstatement. Every time, he was given a reply by the Respondent/Management that the matter was under consideration and he would do the needful. As nothing was done, the Petitioner caused a lawyer notice dated 15-9-1995 to the Respondent demanding reinstatement. Since there was no reply, with the help of legal aid centre, the Petitioner raised a dispute for his non-employment before the Assistant Labour Commissioner (Central). No settlement could be arrived at before the conciliation officer. On the basis of the failure report submitted by him to the Govt. the present industrial dispute has been referred to this Tribunal for adjudication. The action of the Respondent in terminating the services of the petitioner orally is mala fide, arbitrary, illegal and unjust. It amounts to retrenchment. Hence, the Respondent has not complied with the provisions of Section 25F of the Industrial Disputes Act, 1947 by giving one month's notice or paying one month salary and retrenchment compensation the termination is illegal. The reason for the termination of the petitioner is that he demanded confirmation in service, to which he is not entitled. The action of the Respondent/Management in terminating the services of the Petitioner is totally arbitrary and amounts to victimisation for having demanded confirmation in service. The Petitioner was not heard on the reasons if any for the termination of his services before termination. Hence it is violative of principles of natural justice, illegal and unjust. In the above circumstances, it is prayed that this Hon'ble

Tribunal may be pleased to pass an award directing the Respondent/Management to reinstate the Petitioner in service with continuity of service and back wages and attendant benefits.

3. The averments in the Counter Statement of the II Party Management are briefly as follows :—

3. The averments in the Counter Statement of the II Party working in various Central Government offices located in Shastri Bhavan. The Government offices are working five days a week and the canteen is also working accordingly. It is not run on any profit motive. The canteen was incurring loss till recently. The Petitioner was engaged as a casual labourer w.e.f. 12-5-1986 on daily wages at the rate of Rs. 8.50 per day and was paid every week. He did not report for duty from 19-6-87 onwards. Subsequently he was engaged from 5-10-87 as a casual labourer at Rs. 10.00 per day. It is denied that the Management got engaged on the demand of the Petitioner for the increase of his wages per day to Rs. 15. The Petitioner was engaged on daily wage basis depending upon the necessity for the services of a casual labourer. When the Petitioner made a demand on 27-1-1989 to be made permanent in service, he was informed that his services cannot be made permanent, as he was engaged as a casual labourer. At the time of vacancy arises, due to the absence of regular wash boy, he was also told that the strength of the canteen staff cannot be increased as the canteen was undergoing financial loss. The Petitioner did not turn up for three months. On 21-4-1989 the Petitioner on his own sent a leave application with medical certificate. He approached the Respondent in the end of April, 1989 seeking employment as casual labourer on daily wage basis. He was informed that since he was absent for three months, another casual labourer was engaged to cater the requirements. Therefore, the Respondent did not terminate the services of the Petitioner. He filed a petition in Labour Court in October, 1989. The Labour Court did not issue any stay preventing the management to engage casual labourers on daily wage basis. The new casual labourer Sri G. Selvaraj was engaged as a regular employee of the canteen in October, 1991 in the vacancy caused by a resignation of one regular employee from the canteen service. After coming to know this position, the Petitioner stopped coming to the canteen, seeking employment and presumably sought employment elsewhere. The Labour in terms of the Labour Court order dated 25-6-1993 the Petitioner was engaged as a casual labourer from 1-9-1993. The Petitioner did not come to the canteen for long spells on several occasions. Whatever daily rate wage was payable to the casual labourer as per the Govt. rule, it was paid to the petitioner. As per the Award, the Petitioner should be reinstated on daily rated wages. After the award, the Petitioner attended the work from 1-9-1993. On 17-11-1993 he asked for Rs. 300 as advance for his personal expenses. As there is no provision for grant of any such advance to casual labourers, the same was not granted. Subsequently, he worked till 28-10-1994 with frequent absents and he did not turn up thereafter. Nobody from canteen management prevented from coming to work even after the issue of legal notice, the Petitioner failed to come to the canteen, seeking employment as casual labourer on daily wage basis. No appointment letter was issued for engaging the casual labourer on daily wage basis. The Respondent have not terminated the service of the Petitioner. The Petitioner himself has stopped coming to the Respondent seeking employment on daily wages. Hence, the question of complying with Section 25F of the I.D. Act does not arise. As the petitioner has deserted the post, he cannot have a claim ever to engage as a casual labourer on daily wage basis. It is prayed that the Tribunal may be pleased to dismiss the claim of the Petitioner.

4. When the matter was taken up for enquiry, the Petitioner was examined himself as WW1 and four documents were marked as Ex. W1 to W4. From the side of the Respondent/Management no one has been examined as a witness. The counsel for the Respondent/Management made an endorsement on the Counter Statement stating there is no oral evidence for the II Party/Management. The arguments of the learned counsel for the II Party/Management was heard. The learned counsel for the I Party has filed his written argument.

5. The Point for my consideration is—

"Whether the Government Body of the Canteen under the control of Director of Supplies and Disposals department has terminated the services of Sri A. Marimuthu from the canteen? If so, whether it is

legal and justified? To what relief the concerned workman is entitled?"

Point :—

The Petitioner Sri A. Marimuthu was engaged as a casual labourer first in the year 1986 on daily wage basis at the rate of Rs. 8.50 per day. Later it was increased to Rs. 10 and then to Rs. 15 per day. Earlier the said canteen was run by the management of the Shastri Bhawan Staff Co-operative Catering Ltd., subsequently, the canteen was taken over and run as departmental canteen by the department of Supplies and Disposals a Shastri Bhavan, Madras. As the service of the petitioner was terminated in the year 1988 by the erstwhile Management, the Petitioner raised an industrial dispute as I.D. No. 1010 of 1988 in the Principal Labour Court, Madras. On 25-6-1993 an Award was passed by the Principal Labour Court, Madras on the basis of the joint endorsement made by the Petitioner and the counsels on either side, which was recorded by the Court. As per that endorsement, the Petitioner was reinstated with continuity of service on daily rate basis without back wages. In the meantime, the canteen management was changed and came under the control of the Director of Supplies and Disposals, Shastri Bhavan as a departmental canteen. The Petitioner as WW1 has deposed so. It is not disputed by the Respondent. The Petitioner had made representations in writing requesting he Chairman and also the Director of Supplies and Disposals Department, Shastri Bhavan, Chennai. The carbon copies of those letters dated 15-10-1993 and 28-4-1994 respectively are Ex. W1 and W2. Then the Petitioner has sent another requisition to the Chairman of the said department through his letter dated 1-6-94 requesting him to consider his case for making him permanent and to fix his seniority above the workman Sri C. Selvaraj, who is junior to him in service. The carbon copy of that letter is Ex. W3. As no reply was received from the authorities, he sent a lawyer notice dated 15-9-1995 to the Director of Supplies and Disposals. The xerox copy of the same is Ex. W4. All these things have been deposed by him as WW1. It is his further evidence in Chief that since he was asked for confirmation of service, he was retrenched from service by the Respondent/Management without giving any reason notice, notice pay and retrenchment compensation and the action of the Respondent/Management by stop from service on 3-11-1994 all of a sudden should be set aside and the Respondent may be directed to reinstate him in service with continuity of service and back wages. It is admitted by him in the cross examination that he used to sign in the attendance register maintained by the canteen for the days he worked and it is Ex. M1 and that he has signed in Ex. M1 upto the forenoon of 28-10-1994. It is his specific evidence in the cross examination that after he was reinstated in service as per the orders of the Labour Court, dated 25-6-1993, he attended the work continuously without absence for a day and he worked continuously till 3-11-1994 when he was non-employed by the Respondent. Earlier in the Chief Examination, it is his evidence that he had been to his village for Diwali festival and when he came back for duty on 3-11-1994, the canteen manager Mr. Natarajan told him that he should not sign the attendance register and can go home, as he was no more required for the work in the canteen. He has stated so in his claim statement also. On the other hand, it is mentioned in the Counter that the Petitioner was engaged on daily wage basis as casual labourer only till 27-1-1989 and thereafter he severed his links with the canteen. It is further contended in the Counter Statement by the Respondent/Management that Labour Court did not issue any order for reinstatement of the Petitioner as casual labourer and hence Sri C. Selvaraj was engaged as a casual labourer who was subsequently made regular employee in October, 1991 in the canteen in the vacancy caused by the resignation of the regular employee from the canteen service. It is further contended in the Counter Statement even after reinstatement in service, subsequent to the orders of the Principal Labour Court, Chennai, the Petitioner did not come to the canteen for long spells on several occasions, seeking employment on daily wages basis as casual labourer. A perusal of Ex. M1 attendance register the Petitioner remained absent three days in September, 1993, 5 days in November, 1993, the whole of December, 1993 worked only for 11 days in January, 1994, 14 days in February, 1994, remained absent for 4 days in June, 1994, worked only for 2 days in July, 1994, remained absent for entire month of August and September, 1994 and finally worked till the forenoon of 28th October, 1994 and he

never turned up for work subsequently. The entries available in Ex. M1 have not been disputed by the Petitioner, when it was put to his notice, when he was cross examined. It is the contention of the Petitioner both in his Claim Statement as well as in his evidence that he was stopped from service by the canteen Manager Mr. Natarajan without any reason and he did not stay back from attending his work in the canteen. He has admitted in the cross examination that he had not preferred any complaint against the Canteen Manager Mr. Natarajan for not allowing him to do the work in the canteen from 3-11-1994 onwards. In the Chief Examination itself, it is his evidence that he had been to his village for Deepawali festival and in the cross examination he has admitted that he had signed in Ex. M1 attendance register upto the forenoon on 28-10-1994. From the entries available in Ex. M1 attendance register, it is seen that prior to the forenoon of 28-10-1994 the Petitioner remained continuously absent in the whole months of August and September, 1994 and the days as mentioned earlier for the other months. From this it is seen that the contention of the petitioner that he had worked continuously ever since he was reinstated in service as per the orders of the Principal Labour Court till 3-11-1994 is incorrect. It is evident from the attendance register that he abstained from duty without any leave letter or prior permission from the Respondent/Management and was a regular absentee. From Ex. M1 attendance register, it is seen that other casual labourer Sri A. Durai engaged by the Respondent/Management as a casual labourer in the canteen was regularly attending the work in the canteen. That was the reason the Respondent/Management to make him permanent in the vacancy caused by the resignation of a permanent employee in the canteen. It is not disputed by the Petitioner. For one such averment made in the Counter Statement, no rejoinder has been filed by the petitioner disputing the allegations in the Counter Statement. Further it is specifically stated in the counter statement that the Petitioner asked for Rs. 300 as advance for his personal expenses on 17-11-93 and as there is no provision for grant of any such advance to casual labourers, the same was not granted and that subsequently, after 28-10-1994, he did not turn up for work thereafter and he has chosen not to come to work for his own volition and nobody from the canteen management prevented him from coming to work. It is the fact as pleaded in the Counter Statement of the Respondent/Management as it is evidenced from the entries in Ex. M1 attendance register that the Petitioner had attended the work in the canteen till the forenoon of 28-10-1994. It is the specific evidence in the Chief Examination as WW1 of the Petitioner that he had been to his village for Deepawali festival and came for duty on 3-11-1994 and he had not preferred any complaint against the Canteen Manager Mr. Natarajan for not allowing him to do the work in the canteen from 3-11-1994 onwards. All these things put together, to enable us to come to a probable conclusion since the Petitioner has demanded advance of Rs. 300 for his personal expenses at the time of Deepawali festival and the Respondent/Management has denied the same as he happened to be a casual labourer, the Petitioner has stopped coming again for duty of his own and he has not been retrenched from service by the Respondent/Management on 3-11-1994 as pleaded by him. If really, the Petitioner was prevented from attending work in the canteen by the Manager Mr. Natarajan for no reason, he would have immediately preferred a complaint against the same to the higher authorities, but he has not done so. From all these available evidence, it is possible for come to a conclusion that the Petitioner was not stopped from service by the Respondent/Management, but he only abstained from duty of his own. Under such circumstances, there is no question of any termination of service of the Petitioner Sri A. Marimuthu by the Governing Body of the Department of Supplies and Disposals for the canteen. In the absence of one such action by the Respondent/Management against the Petitioner, it can not be said that the Petitioner service by the Respondent/Management in an unjustified manner and it is illegal. Under such circumstances, the question of violation of Section 25F of Industrial Disputes Act by not giving reason for termination notice, notice pay and retrenchment compensation does not at all arise. Hence, the Petitioner is not entitled to any relief claimed in the present industrial dispute. Thus, the point is answered accordingly.

In the result, an award is passed holding that the relief prayed for by the I Party/Petitioner cannot be granted, as he is not entitled for the same. No Cost.

(Dictated to the Stenographer, transcribed, typed by him and corrected and pronounced by me in the open Court on this day the 31st December, 2001).

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

For the I Party/Workman : WW1 Shri A. Marimuthu.

For the II Party/Management : None.

DOCUMENTS MARKED :

For the I Party : Workman :—

Ex. No. Date Description

W1 15-10-93 Xerox copy of the letter from the Petitioner to the Management.

W2 28-4-94 Xerox copy of the letter from the Petitioner to the Management.

W3 1-6-1994 Xerox copy of the letter from the Petitioner to the Management.

W4 15-9-95 Xerox copy of the letter from M/s. Lakshmi Priya Associates to the Management.

For the II Party/Management :

M1 Sep. 1993 to March, 1995 Original casual labour attendance register.

नई दिल्ली, 15 फरवरी, 2002

का.आ. 856.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 145/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[सं. एल-40012/40/99-आई. आर. (डी. यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 856.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 145/2001) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 15-2-2002.

[No. L-40012/40/99-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 31st December, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

INDUSTRIAL DISPUTE NO. 145/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 141/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947),

between the Workman Sri K. Palanisamy and the Management of the Chief General Manager, Telecom Tamil Nadu Circle, Chennai and the General Manager, Telecom, Erode].

BETWEEN

Sri K. Palanisamy.

.... I Party/Workman

AND

1. The Chief General Manager, Telecom Tamil Nadu Circle, Chennai.
2. The General Manager, Telecom, Erode.

.... II Party/Management

APPEARANCE :

For the Workman : M/s. M. Gnanasekar & C. Premavathy, Advocates.

For the Management : Sri S. Thiagarajan, Addl. CGSC.

The Government of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-40012/40/99-IR(DU) dated 26-07-1999.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 141/99. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 145/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 02-02-2001. On receipt of notice from this Tribunal, counsel on either side present with their respective parties and prosecuted this case further.

When the matter came up before me for final hearing on 26-12-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, the written arguments filed by the learned counsel for the I Party/Workman and upon hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Government for adjudication by this Tribunal is as follows :—

“Whether the action of the Management in terminating the services of Shri K. Palanisamy, Casual Mazdoor is legal and justified? If not, to what relief the workman is entitled?”

2. The averments in the Claim Statement of the I Party/Workman Sri K. Palanisamy are briefly as follows :—

The I Party/Workman Sri K. Palanisamy (hereinafter refers to as Petitioner) worked as casual mazdoor in the Erode Sub Division of II Party/Telecom Department from 11-03-87 to 21-03-89. Though he worked for 320 days during this period, his services have not been regularised. There is a scheme known as ‘Grant of Temporary Status and Regularisation Scheme for casual mazdoors. The Petitioner was not granted temporary status in accordance with the scheme. He was employed in the Office of the General Manager, Telecom Department, Erode, at the time of termination on 21-03-89. The Supreme Court gave a direction to the Telecom Department to prepare a Scheme for absorbing the Casual Labourers employed in the Post and Telegraph Department on daily wages. For absorbing the Casual Labourers working for more than one year in the department, the said scheme was introduced as per the direction of the Supreme Court. Further as per the Supreme Court direction, these Casual Labourers have to be paid the same wages as of regular employees.

Though the Petitioner was paid arrears, he was not regularised. In spite of representations made by the Petitioner to the General Manager, Telecom Department, Erode, for re-engagement of the Petitioner in service, no reply was given to the Petitioner. So, he approached the Hon'ble Central Administrative Tribunal and filed a petition as O.A. No. 1507/93 and the Petitioner was not re-engaged by the Respondent/Department as per the direction of the Central Administrative Tribunal. The Respondent/Department was directed to re-engage the Petitioner in preference to the freshers from the open market in the unit from which they were retrenched last. In spite of the direction, the Respondent/Department engaged workers on contract basis, which is highly illegal and arbitrary. The services rendered by the Petitioner were as casual mazdoor. He was paid under ACG-17. It is also to be taken into account for regularisation of services, as held by the Central Administrative Tribunal, Chennai Bench-I in the case of C. Murugesan Vs. Union of India. Therefore, the Respondent ought to have re-engaged the Petitioner in service. He has not deserted from the work. Even assuming without admitting that the Petitioner has deserted from service, the Respondents are bound to put the Petitioner on notice even before terminating him from services. The Respondent ought to have called the Petitioner to join the duty. He has put in more than a decade in continuous service and the termination of his service is in violation of Section 25F of Industrial Disputes Act, 1947. The Petitioner was not given any notice or reply for representation. His termination from service is in violation of natural justice. The Petitioner is entitled to be reinstated with all other service benefits including arrears of back wages. The Respondent ought to have conferred temporary status as per the temporary status scheme and further absorbed him against regular Group D post, not doing so, is illegal and arbitrary. As no settlement could be reached before the conciliating authority, which ended in a failure, on the basis of the report of failure of conciliation this dispute has been referred by the Government for adjudication by the Hon'ble Tribunal. Hence, it is prayed that this Hon'ble Court may be pleased to pass an award holding that the order of termination dated 21-3-89 is illegal and arbitrary and consequently direct the Respondent/Management to reinstate the Petitioner in service w.e.f. 21-3-89 and to pay all arrears of back wages with attendant benefits.

3. The averments in the Counter Statement of the II Party/Management (hereinafter refers to as Respondent) are briefly as follows:—

The Petitioner was engaged by the staff of the department and not by the department for the said works. He had worked for a few days only under the line staff of the department from 11-05-87 to 21-03-89 for 320 days. He had not worked continuously which is varying with the statement of days given in para 2 of his Claim Statement. The Hon'ble Central Administrative Tribunal has given direction that the applicant should be re-engaged, if there is work, in preference to fresh candidates from the open market in the same unit from where they were retrenched last and that if the applicants are going to be re-engaged in pursuance of this order, none of the Casual Labourers, who are in service will be retrenched. As per his own statement, he worked from 11-05-87 to 21-03-89 for a total number of 687 days. Number of days given as 320 in his Claim Statement differs from a number of days given in his break up statement. The Petitioner could not be granted with temporary status for which he should have been reinstated after absence. The reinstatement could not be issued, since he was not on roll of the department, prior to 30-3-1985, he had not worked for 240 days in a year prior to 30-3-1985. The engagement itself is irregular since it is after 30-3-1985. The reinstatement is applicable only for those who have been engaged prior to 30-03-85 and satisfying other conditions. The Petitioner had been given daily wages only. The department has framed a scheme known as Regularisation Scheme, which stipulates that temporary status would be conferred on all the Casual Labourers currently employed and who have rendered the continuous service of atleast one year, out of which, they must have been engaged on work for the period of 240 days, such casual mazdoors will be designated as temporary mazdoors. The Petitioner had not worked for one year continuously out of which he should have worked for at least 240 days in a year. He was not on roll of the department for a minimum of 240 days in the preceding year for considering the reinstatement. He was not on roll of the department on or prior to 30-3-1985. As per CGMT, Chennai letter dated 12-3-1996, he is ineligible for consideration of reinstatement. It is clearly stated in that "as per the orders of Department

of Telecommunication, the employment of Casual Labourers from open market, is banned after 30-03-1985". After the Supreme Court judgement, the Department of Telecom, New Delhi has issued instructions dated 30-3-1985 regarding imposition of ban on engagement for fresh Casual Labourers. However, the casual mazdoors in the department ought to be determined under the direction of Department of Telecom, New Delhi on the basis of rules and instructions. The payment of arrears is done for the days he had worked. This will not in any way ensure for the reinstatement. He has not appeared after March, 1989. He had approached the department in the fog end of 1992 for reinstatement. Thus, the absence is more than three years upto 1992. He is not a candidate sponsored by the employment exchange. As per Department of Telecommunication, New Delhi letter dated 21-10-92, the break-in-service upto six months can be condoned by the Divisional Engineer concerned on merit of the individual cases. Any break-in-service upto one year arising due to the department's inability to engage them for want of work, the Chief General Manager, Telecom Tamil Nadu Circle, Madras can condone the break-in-service. The case of the Petitioner do not qualify, since his break-in-service is more than a year and cause not due to departmental reasons but purely due to his reasons. He has entered only in 4/87, as per his statement and the engagement itself is irregular, since it is after 30-03-1985. The Petitioner has not fulfilled the conditions stipulated for reinstatement. Hence, his reinstatement in service will not arise. The Petitioner is a casual mazdoor engaged by the staff of the department on daily wages and not by the department. Hence, the question of issue of notice wages etc. does not arise. Issue of notice/pay of one month wages, applies only to candidates who have worked continuously in a year for more than 240 days in that year. The Petitioner left the department on his own and he approached on a later date in 1992 after coming to know the department's policy to grant temporary status for existing Casual Labourers, those who had entered on or before 30-03-1985 and continuously working in the Department so as to gain back door entry. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the claim of the Petitioner.

4. When the matter was taken up for enquiry, the Petitioner has examined himself as WW1 and five documents have been marked as Ex. W1 to W5. On the side of the Respondent/Management, an official working in the Sub Divisional Engineer Office of General Manager, Telecom, Erode was examined as Management witness. Three documents have been marked as Ex. M1 and M3. The learned counsel for the I Party/Petitioner has submitted this written arguments and the learned counsel for the II Party/Management advanced his arguments.

5. The Point for my consideration is—

"Whether the action of the Management in terminating the services of Shri K. Palanisamy, Casual Mazdoor is legal and justified? If not, to what relief the workman is entitled?"

Point:—

Though it is alleged in the Claim Statement of the Petitioner that he worked for 320 days from 11-05-87 to 21-03-89 as casual mazdoor, while giving evidence as WW1, he has deposed that on 20-02-85 he was engaged as Casual Labour in the Sub Divisional Office, Telecom, Erode. In support of his evidence, he filed Ex. W1 series, certificates said to have been issued by the Telecom Department as service certificates. In the Claim Statement the Petitioner has not whispered anything about the issuance of service certificates by the official in the Telecom department for the period he worked in the department. No such official has been examined as a witness for the Petitioner to speak about the contents of those certificates. In the Counter Statement, the Respondent/Department has stated the period for which the Petitioner was engaged by the Respondent/Department i.e. 320 days. It is also stated in the Counter Statement that the Petitioner was engaged by the II Party/Respondent Management as a casual mazdoor through the regular staff of the department and the department has not engaged the Petitioner direct. That has not been disputed by way of any reply statement by the Petitioner, while giving evidence as WW1 in the Chief Examination itself. The Petitioner himself has admitted that he was assisting only the cable jointer, the permanent employee of the Telecom Department. In the cross examination, he has admitted that he was not employed by the Telecom Department directly and he used to work under a departmental employee as and

when he allots work for him. He has also admitted that the days on which there is no work, he has to go back. MW1 has also deposed that as and when the Casual Labour comes for work, if any work is available, he will be engaged and there is no certainty for job. It is also admitted that wages used to be fixed by the District Collector and it used to vary and the wages for these Casual Labourers are not fixed by cable jointer who engage them for work or by the department. It is also not disputed that on different work, different rates of wages used to be given. From this, it is seen that the Casual Labourers like the Petitioners were engaged by the Respondent/Telecom department as and when the work was available and those people were not engaged directly by the department on such occasions, and they were engaged only through the permanent employees of the Respondent/Department. Admittedly no appointment order is given for the Casual Labourers, when their services were engaged by the Respondent/Telecom Department. Further, it is not disputed that the Department of Telecommunication of the Respondent/Department has issued a circular dated 30-3-85 stating there should be no fresh recruitment/employment as Casual Labourers. So, there was a ban for recruiting Casual Labourers by the Respondent/Department subsequent to 30-3-85. The xerox copy of the circular is marked as Ex. M3. If there is any employment has been made as Casual Labour subsequent to this date, it is nothing but an irregular engagement opposed to the instructions given by the Department of Telecommunication under Ex. M3. It is clearly averred in the Counter Statement of the Respondent that the Petitioner has engaged only in April, 1987 and not prior to 30-03-1985 and hence the engagement itself is irregular. Further, it is alleged that the Petitioner has not fulfilled the conditions which are required for conferring on him temporary status as per the scheme and hence, he was not considered for reinstatement and since he was a casual mazdoor, there is no privity of contract between the Petitioner and Respondent Department and the department has no control over the Petitioner. It is the stand of the Respondent/Department that at present the work is being continued and done by the labourers engaged by the contractor. This is also not disputed. As per the Claim Statement of the Petitioner himself, he was engaged from 11-5-87 only. So, the Petitioner's engagement as a Casual Labourer after 30-03-1985 is an irregular one. Only in oral evidence he says that he joined the department on 20-02-1985. He is relying upon the service particulars given to him as service certificates under Ex. W1. In that statement, the Petitioner is shown to have worked as casual mazdoor for 395 days intermittently till 28-04-1989. As per that Ex. W1 service certificates, he had worked for only 395 days and got the wages under vouchers of J.E. accounts. From this, it is seen that he was not employed as a departmental employee. It is his admission in evidence that from February, 1985 to April, 1989 continuously, he had not worked in the department and that he had not worked even on a single day from July, 1986 to January, 1987 and that in the year 1988 for the months June, July and August. In April, 1989 he had worked only for 6 days in the Telecom Department. It is also his admission that he was not issued any casual mazdoor card and that when he came to know about the Casual Labourer scheme dated 23-11-89, he was not working as Casual Labourer in the department. It is the categorical evidence of WW1 that what he stated in the Claim Statement that he had worked as a Casual Labour from 11-05-87 to 21-03-89 for a period of 320 days is incorrect. It is his admission that he was not given any written order of termination. It is his further evidence that on hearing from the Union people that there is a departmental circular in respect of conferring temporary status to casual mazdoors, they have written to the department requesting them to furnish service particulars and only after that he gave petitions to department seeking re-employment. He denied the suggestion that he abandoned the work as casual mazdoor and hence he has no basis for the claim he now made in this industrial dispute. The Petitioner has clearly stated that he was stopped from work on 30-4-89 as he was not having card. He has not made any representation to the Respondent/Management requesting for work as casual mazdoor. It is the evidence of MW1 that the Petitioner Sri K. Palanisamy had abandoned work from 28-04-89 and subsequently he has not turned up for work in the department. From all these oral and documentary evidence, it is seen that the Petitioner has not been employed by the Respondent/Telecom Department directly and the employment of the Petitioner as Casual Labourer subsequent to 30-03-85 is only irregular and he has not approached the department for work subsequent to 30-04-89. From the evidence, it is

seen that the Petitioner has not fulfilled the conditions required to grant him temporary status. Further, he came with the request only in 1993 for grant of temporary status. From this, it can be concluded that it is a clear case of abandonment. So on the basis of these available facts, it cannot be said that the provisions of Section 25F of Industrial Disputes Act, 1947 is attracted for this case enabling the Petitioner to claim relief under that provision of law. Such provision is applicable to an employee, who has been regularly appointed by the department and any retrenchment has been taken place without giving any notice or notice pay or compensation. From the facts available in this case, it is clear that the Petitioner was engaged as a Casual Labourer and was engaged by the department through the permanent employees of the department as and when there was work available in the department as casual nature and the Petitioner was never employed as permanent employee of the department. It is evident from the materials available in this case that the Petitioner was engaged for certain period for particular work and the employment automatically came to an end as soon as the work was over. Under such circumstances, it cannot be said that the Petitioner's services were retrenched by the Respondent/Management or the Respondent/Management has terminated him from service so as to claim reinstatement in service. Under such circumstances, it can be concluded that the question of termination of service by the Respondent/Management of the Petitioner as casual mazdoor does not at all arise. So, the relief of reinstatement of the Petitioner in service by the II Party/Management in the Department of Telecommunication will not at all arise. Thus, I answered the point accordingly.

6. In the result, an Award is passed holding that the relief prayed for by the I Party/Workman Sri K. Palanisamy against the Respondent/Telecom Department cannot be granted. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st December, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

For the I Party/Workman : WW1 Sri K. Palanisamy

For the II Party/Management : MW1 Sri T. R. Arumugam
DOCUMENTS MARKED :

For the I Party/Workman :—

Ex. No.	Date	Description
W1	Nil	Xerox copy of the Service particulars of the Petitioner for various periods issued by the Management.
W2	19-05-89	Xerox copy of the letter from the Petitioner to the Management for issuance of certificate for the period he worked as Casual Labour.
W3	02-05-91	Xerox copy of the letter from the Petitioner to the Respondent requesting to issue casual mazdoor card.
W4	08-08-92	Xerox copy of the letter from the Petitioner to the Management with regard to issuance of mazdoor card.
W5	Nil	Xerox copy of the letter from the Petitioner to the Management intimating the number of days he worked as casual labour on muster rolls.

For the II Party/Management :—

Ex. No.	Date	Description
M1	Nil	Xerox copy of the service particulars of the Petitioner for the period from 20-1-87 to 30-4-87 issued by the Management.
M2	17/23-11-89	Xerox copy of the circular issued by the Management with regard to Casual Labour (Grant of temporary status and regularisation) Scheme.
M3	11-04-85	Xerox copy of the circular issued by the Management with regard to recruitment and appointment of Casual Labourers.

Sd/-
Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ. 857.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.जी.एच.एस. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[नं.एन-42011/30/96-आई.आर.(डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 857.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of C.G.H.S. and their workman, which was received by the Central Government on 15-2-2002.

[No. L-42011/30/96-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR

PRESENT :

SHRI B. G. SAXENA, Presiding Officer

Reference No. CGIT : 229/2000

The Dy. Director, C.G.H.S.

AND

The Gen. Secy. C.G.H.S. Employees Assn.

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by Clause (d) of Sub Section (1) and Sub Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-42011/30/96-IR(DU) dated 07/21-10-97 on the following schedule.

SCHEDULE

“Whether the action of the management of C.G.H.S., Nagpur in not giving seniority w.e.f. 27-05-67 as Staff

Nurse Gr. I to Smt. S. P. Ghodke, a Staff Nurse, Gr-I and in not promoting her as Selection Grade Staff Nurse Gr-I w.e.f. 01-08-86 is justified, legal and proper? If not, to what relief she is entitled to get?”

This dispute has been raised by Smt. S. P. Ghodke, Staff Nurse Gr-I through General Secretary of her union. The workman has claimed that she was working in P&T dispensary, at Nagpur since 27-05-65 as Staff Nurse, Central Government Health Scheme started in 1973 in Nagpur and from 19-10-73 she joined C.G.H.S., Nagpur. Two other nurses, were there one of them V. V. Masih had joined C.G.H.S. on 16-10-73. She was not placed properly in the Seniority List and she was not promoted in Selection Grade Staff Nurse Gr-I w.e.f. 01-08-86. Necessary order be passed concerning her Selection Grade

The management of C.G.H.S. through Dr. Mrs. S. Devi contested the case. In Written Statement the management has stated that Mrs. V. V. Masih had joined service of C.G.H.S. from 16-10-73. Mrs. S. P. Ghodke joined service on 10-10-73 afternoon. So she was placed at third place. V. V. Masih was schedule caste and she was granted Selection Grade as the Selection Grade post was reserved for schedule caste candidate. S. P. Ghodke, workman was not schedule caste. She could not get the Selection Grade as the post was not deserved for other candidate. She is therefore not entitled to any relief.

From the side of workman the affidavit of workman Mrs. S. P. Ghodke was filed on 12-02-01. She was not cross examined by the management.

The affidavit of Dr. Surendra Kumar was filed on 28-03-2001. This witness of the management was also not cross examined by the workman.

Both the parties have submitted their written Arguments.

I have considered the oral and documentary evidence on record and the arguments of the parties.

It is admitted to both the parties that Mrs. S. G. Dhosewan and Mrs. V. V. Masih, Staff Nurses joined duty in C.G.H.S., Nagpur on 16-10-73. The workman S. P. Ghodke joined duty on 19-10-73.

It is also admitted that S. P. Ghodke, workman has retired from service. She did not raise the issue of seniority in 1973. She also did not raise the dispute in 1986 when V. V. Masih was granted Selection Grade. The order dated 30-10-86 letter No. 2/120-CGHS/NA/1721 shows that the seniority of S. P. Ghodke was determined as per order contained in C.G.H.S. Letter No. 18013/6/83-CGHS-1 dated 16-11-84. The seniority was determined from 19-10-73 from the date of her joining service. In the seniority list prepared on 01-08-85, S. P. Ghodke was placed at Serial No-2 and V. V. Masih was placed at Serial No-1. V. V. Masih had joined the service earlier than S. P. Ghodke. V. V. Masih was promoted in Selection Grade from 01-08-86.

In view of the above documents, it is clear that V. V. Masih was schedule caste candidate and she therefore got Selection Grade post. S. P. Ghodke could get Selection Grade only when this post was dereserved from schedule caste category by the department. In these circumstances there is no illegality in the action of management. I may further point out that the matter of seniority and promotion could be raised in the CGIT Court soon after 1986. There is nothing on record as to why S. P. Ghodke did not raise this dispute in 1986 or soon thereafter. Generally such dispute should be settled atleast five years before the date of retirement, so that the Tribunal may look into the matter before the retirement of the workman. The parties have not submitted the rules which are framed concerning the seniority of C.G.H.S. employees. In view of the above facts, no relief can be granted to the workman.

ORDER

The action of the management of C.G.H.S., Nagpur in not giving seniority to workman Smt. S. P. Ghodke from 27-05-67 and not granting her promotion in Selection Grade w.e.f. 01-08-86 is justified.

No other directions are required at this stage.

The reference is disposed of accordingly.

Dated : 04-1-2002

B. G. SAXENA, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ. 858.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 141/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[सं.एल-40012/44/99-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 858.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 141/2001) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workman, which was received by the Central Government on 15-2-2002.

[No. L-40012/44/99-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 31st December, 2001

PRESENT : K. Karthikeyan, Presiding Officer.

INDUSTRIAL DISPUTE NO. 141/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 136/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri D. Kannan and the Management of the Chief General Manager, Telecom Tamil Nadu Circle, Chennai and the General Manager, Telecom, Erode.)

BETWEEN

Sri D. Kannan. I Party/Workman

AND

1. The Chief General Manager, II Party/
Telecom Tamil Nadu Circle, Management
Chennai.

2. The General Manager,
Telecom,
Erode.

APPEARANCE :

For the Workman : M/s. M. Gnanasekar & C. Premathy, Advocates.

For the Management : Sri S. Thiagarajan, Addl. CGSC.

The Government of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-40012/44/99-IR (DU) dated 26-07-1999.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 136/99. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 141/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 02-02-2001. On receipt of notice from this Tribunal, counsel on either side present with their respective parties and prosecuted this case further.

When the matter came up before me for final hearing on 26-12-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, the written arguments filed by the learned counsel for the I Party/Workman, upon hearing the arguments advanced by the learned counsel for the II Party/Management and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Government for adjudication by this Tribunal is as follows :—

“Whether the action of the Management in terminating the services of Shri D. Kannan, Casual Mazdoor is legal and justified? If not, to what relief the workman is entitled?”

2. The averments in the Claim Statement of the I Party/Workman Sri D. Kannan are briefly as follows :—

The I Party/Workman Sri D. Kannan (hereinafter refers to as Petitioner) worked as casual mazdoor in the Erode Sub Division of II Party/Telecom Department from 11-05-87 to 21-03-89. Though he worked for 320 days during this period, his services have not been regularised. There is a scheme known as ‘Grant of Temporary Status and Regularisation Scheme’ for casual mazdoors. The Petitioner was not granted temporary status in accordance with the scheme. He was employed in the Office of the General Manager, Telecom Department, Erode, at the time of termination on 21-03-89. The Supreme Court gave a direction to the Telecom Department to prepare a Scheme for absorbing the Casual Labourers employed in the Post & Telegraph Department on daily rated wages. For absorbing the Casual Labourers working for more than one year in the department, the said scheme was introduced as per the direction of the Supreme Court. Further as per the Supreme Court direction, these Casual Labourers have to be paid the same wages as a regular employees. Though the Petitioner was paid arrears, he was not regularised. In spite of representations made by the Petitioner to the General Manager, Telecom Department, Erode, for re-engagement of the Petitioner in service, no reply was given to the Petitioner. So, he approached the Hon’ble Central Administrative Tribunal and filed a petition as O.A. No. 1507/93 and the Petitioner was not re-engaged by the Respondent/Department as per the direction of the Central Administrative Tribunal. The Respondent/Department was directed to re-engage the Petitioner in preference to the freshers from the open market in the unit from which they were retrenched last. In spite of the direction, the Respondent Department engaged workers on contract basis, which is highly illegal and arbitrary. The services rendered by the Petitioner were as casual mazdoor. He was paid under ACG-17. It is also to be taken into account for regularisation of services, as held by the Central Administrative Tribunal, Chennai Bench-I in the case of C. Murugesan Vs. Union of India. Therefore, the Respondent ought to have re-engaged the Petitioner in service. He has not deserted from the work. Even assuming without admitting that the Petitioner has deserted from service, the Respondents are bound to put the Petitioner on notice even before terminating him from services. The Respondent ought to have called the Petitioner to join the duty. He has put in more than a decade in continuous service and the termination of his service is in violation of Section 25F of Industrial Disputes Act, 1947. The Petitioner was not given any notice or reply for representation. His termination from service is in violation

of natural justice. The Petitioner is entitled to be reinstated with all other service benefits including arrears of back wages. The Respondent ought to have conferred temporary status as per the temporary status scheme and further absorbed him against regular Group D post, not doing so, is illegal and arbitrary. As no settlement could be reached before the conciliating authority, which ended in a failure, on the basis of the report of failure of conciliation this dispute has been referred by the Government for adjudication by the Hon’ble Tribunal. Hence, it is prayed that this Hon’ble Court may be pleased to pass an award holding that the order of termination dated 21-3-89 is illegal and arbitrary and consequently direct the Respondent/Management to reinstate the Petitioner in service w.e.f. 21-3-89 and to pay all arrears of back wages with attendant benefits.

3. The averments in the Counter Statement of the II Party/Management (hereinafter refers to as Respondent) are briefly as follows :—

The Petitioner was engaged by the staff of the department and not by the department for the said works. He had worked for a few days only under the line staff of the department as 42 days in M.R. in 1987, then again for 195 days in 1987, 209 days in 1988 and 104 days in 1989. He had not worked continuously as mentioned in his Claim Statement. The Hon’ble Central Administrative Tribunal has given direction that the applicant should be re-engaged, if there is work, in preference to fresh candidates from the open market in the same unit from where they were retrenched last and that if the applicants are going to be re-engaged in pursuance of this order, none of the Casual Labourers, who are in service will be retrenched. As per his own statement, he worked from 5-4-87 to 29-4-89 for a total number of 550 days including muster roll during 4/89, which is contrary to the period of work, he mentioned in his Claim Statement as from 11-5-87 to 21-3-89. The number of days given as 320 differs from number of 550 given in break up statement. In his letter dated 5-2-97, he has stated that he had worked for 860 days. The Petitioner could not be granted with temporary status for which he should have been reinstated after absence. The reinstatement could not be issued, since he was not on roll of the department, prior to 30-3-1985, he had not worked for 240 days in a year prior to 30-3-1985. The engagement itself is irregular since it is after 30-3-1985. The reinstatement is applicable only for those who have been engaged prior to 30-03-85 and satisfying other conditions. The Petitioner had been given daily wages only except for the M.R. days of 42. The department has framed a scheme known as Regularisation Scheme, which stipulates that temporary status would be conferred on all the Casual Labourers currently employed and who have rendered the continuous service of atleast one year, out of which, they must have been engaged on work for the period of 240 days, such casual mazdoors will be designated as temporary mazdoors. The Petitioner had not worked for one year continuously out of which he should have worked for at least 240 days in a year. He was not on roll of the department for a minimum of 240 days in the preceding year for considering the reinstatement. He was not on roll of the department on or prior to 30-3-1985. As per CGMT, Chennai letter dated 12-3-1996, he is ineligible for consideration of reinstatement. It is clearly stated in that “as per the orders of Department of Telecommunication, the employment of Casual Labourers from open market, is banned after 30-03-1985”. As per the statement made by the Petitioner he had worked in MR for 42 days in 1987. After the Supreme Court judgement, the Department of Telecom, New Delhi has issued instructions dated 30-3-1985 regarding imposition of ban on engagement for fresh Casual Labourers. However, the casual mazdoors in the department ought to be determined under the direction of Department of Telecom, New Delhi on the basis of rules and instructions. The payment of arrears is done for the days he had worked. This will not in any way ensure for the reinstatement. The Petitioner had not appeared after March, 1989. He had approached the department in the far end of 1992 for reinstatement. Thus, the absence is more than three years upto 1992. He is not a candidate sponsored by the employment exchange. As per Department of Telecommunication, New Delhi letter dated 21-10-92, the break-in-service upto six months can be condoned by the Divisional Engineer concerned on merit of the individual cases. Any break-in-service upto one year arising due to the department’s inability to engage them for want of work, the Chief General Manager, Telecom Tamil Nadu Circle, Madras can condone the break-in-service. The case of the Petitioner do not qualify, since his break-in-service

is more than a year and cause not due to departmental reasons but purely due to his reasons. He has entered only in 4/87, as per his statement and the engagement itself is irregular, since it is after 30-03-1985. The Petitioner has not fulfilled the conditions stipulated for reinstatement. Hence, his reinstatement in service will not arise. The Petitioner is a casual mazdoor engaged by the staff of the department on daily wages and not by the department. Hence, the question of issue of notice, wages etc. does not arise. Issue of notice/pay of one month wages, applies only to candidates who have worked continuously in a year for more than 240 days in that year. The Petitioner left the department on his own and he approached on a later date in 1992 after coming to know the department's policy to grant temporary status for existing Casual Labourers, those who had entered on or before 30-03-1985 and continuously working in the department so as to gain back door entry. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the claim of the Petitioner.

4. When the matter was taken up for enquiry, the Petitioner has examined himself as WW1 and seven documents have been marked as Ex. W1 to W7. On the side of the Respondent/Management, an official working in the Sub Divisional Engineer Office of General Manager, Telecom, Erode was examined as Management witness. Two documents have been marked as Ex. M1 and M2. The learned counsel for the I Party/Petitioner has submitted his written arguments and the learned counsel for the II Party/Management advanced his arguments.

5. The Point for my consideration is—

"Whether the action of the Management in terminating the services of Shri D. Kannan, Casual Mazdoor is legal and justified? If not, to what relief the workman is entitled?"

Point :—

Though it is alleged in the Claim Statement of the Petitioner that he worked for 320 days from 11-05-87 to 21-03-89 as casual mazdoor, while giving evidence as WW1, he has deposed that on 20-02-85 he was engaged as Casual Labour in the Sub Divisional Office, Telecom, Erode. In support of his evidence, he filed Ex. W1 series, four certificates said to have been issued by the Telecom Department as service certificates. In the Claim Statement the Petitioner has not whispered anything about the issuance of service certificates by the official in the Telecom department for the period he worked in the department. No such official has been examined as a witness for the Petitioner to speak about the contents of those certificates. In the Counter Statement, the Respondent/Department has given particulars with regard to the date on which the Petitioner was engaged by the Respondent/Department the total number of 550 days. It is also stated in para 11 of the Counter Statement that the Petitioner was engaged by the II Party/Respondent Management as a casual mazdoor through the regular staff of the department and the department has not engaged the Petitioner direct. That has not been disputed by way of any reply statement by the Petitioner. While giving evidence as WW1 in the Chief Examination itself, the Petitioner himself has admitted that he was assisting only the cable jointer, the permanent employee of the Telecom Department. In the cross examination, he has admitted that he was not employed by the Telecom Department directly and he used to work under a departmental employee as and when he allots work for him. He has also admitted that the days on which there is no work, he has to go back. In the re-examination also, WW1 has admitted that cable jointer used to allocate work for us. MW1 has also deposed that as and when the Casual Labour comes for work, if any work is available, he will be engaged and there is no certainty for job. It is also admitted that wages used to be fixed by the District Collector and it used to vary and the wages for these Casual Labourers are not fixed by cable jointer who engage them for work or by the department. It is also not disputed that for different work, different rates of wages used to be given. From this, it is seen that the Casual Labourers like the Petitioner were engaged by the Respondent/Telecom department as and when the work was available and those people were not engaged directly by the department on such occasions, and they were engaged only through the permanent employees of the Respondent Department. Admittedly no appointment order is given for the Casual Labourers, when

their services were engaged by the Respondent/Telecom Department. Further, it is not disputed that the Department of Telecommunication of the Respondent/Department has issued a circular dated 30-3-85 stating there should be no fresh recruitment employment as Casual Labourer. So, there was a ban for recruiting Casual Labourers by the Respondent/Department subsequent to 30-3-85. The xerox copy of the circular is marked as Ex. M2. If there is any employment has been made as Casual Labour subsequent to this date it is nothing but an irregular engagement opposed to the instructions given by the Department of Telecommunication under Ex. M2. It is clearly averred in the Counter Statement of the Respondent that the Petitioner has engaged only in April, 1987 and not prior to 30-03-1985 and hence the engagement itself is irregular. Further, it is alleged that the Petitioner has not fulfilled the conditions which are required for conferring on him temporary status as per the scheme and hence, he was not considered for reinstatement and since he was a casual mazdoor, there is no privity of contract between the Petitioner and Respondent Department and the department has no control over the Petitioner. It is the stand of the Respondent/Department that at present the work is being continued and done by the labourers engaged by the contractor. This is also not disputed. As per the Claim Statement of the Petitioner himself, he was engaged from 11-5-87 only. So, the Petitioner's engagement as a Casual Labourer after 30-03-1985 is an irregular one. Only in oral evidence he says that he joined the department on 20-02-1985. For that he is relying upon the service particulars given to him as service certificates Ex. W1 (1). In that statement the Petitioner is shown to have worked as casual mazdoor for 16 days intermittently till 8-6-85. As per that Ex. W1(1) he had worked for only 37 days and got the wages under vouchers of J.E. accounts. From this, it is seen that he was not employed as a departmental employee. Even as per the Ex. W1(1), for a period of three and half months, he has worked only for 60 days. It is his admission in evidence that from August, 1985 to June, 1986 he had not worked in the department and he worked in July, 1986 only for 8 days and his wages used to vary according to his work as Casual Labourer. It is also his admission that he was not issued any casual mazdoor card and that when he came to know about the Casual Labourer scheme dated 23-11-89, he was not working as Casual Labourer in the department. It is also his admission that he was not in continuous service from 1985 to 1989. On the other hand, it is the evidence of MW1 that the Petitioner had worked for a total number of 42 days i.e. 11 days in April and 31 days in May, 1987 under muster roll as it is mentioned in Ex. W1 series(3) and the total number of days he worked on ACG 17 is 508. It is his categorical evidence that the Petitioner had worked only from 5-4-87 onwards and he was not working continuously till 29-4-89 and subsequent to 29-4-89 he has not at all come to work in the department and he sent Ex. W7 petition only on 1-9-92 requesting for work. In Ex. W7, the Petitioner has clearly stated that he was stopped from work on 30-4-89 as he was not having card and he made that representation under Ex. W7 requesting for work only on 1-9-92. That is why, MW1 has given evidence stating that the Petitioner Sri D. Kannan had abandoned work from 30-04-89 to 01-09-92. From all these oral and documentary evidence, it is seen that the Petitioner has not been employed by the Respondent/Telecom Department directly and the employment of the Petitioner as Casual Labourer subsequent to 30-03-85 is only irregular and he has approached the department for work subsequent to 30-04-89 only on 1-9-92 under Ex. W7. From the evidence, it is seen that the Petitioner has not fulfilled the conditions required to grant him temporary status. Further, he came with the request only in 1993 for grant of temporary status. From this, it can be concluded that it is a clear case of abandonment. So on the basis of these available facts, it cannot be said that the provisions of Section 25F of Industrial Disputes Act, 1947 is attracted for this case enabling the Petitioner to claim relief under that provision of law. Such provision is applicable to an employee, who has been regularly appointed by the department and any retrenchment has been taken place without giving any notice or notice pay or compensation. From the facts available in this case, it is clear that the Petitioner was engaged as a Casual Labourer, and was engaged by the department through the permanent employees of the department as and when there was work available in the department as casual nature and the Petitioner was never employed as permanent employee of the department. It is evident from the materials available in this case that the Petitioner was engaged for certain period for particular work and the employment automatically came to an end as

soon as the work was over. Under such circumstances, it cannot be said that the Petitioner's services were retrenched by the Respondent/Management or the Respondent/Management has terminated him from service so as to claim reinstatement in service. Under such circumstances, it can be concluded that the question of termination of service by the Respondent/Management of the Petitioner as casual mazdoor does not at all arise. So, the relief of reinstatement of the Petitioner in service by the II Party/Management in the Department of Telecommunication will not at all arise. Thus, I answered the point accordingly.

6. In the result, an Award is passed holding that the relief prayed for by the I Party/Workman Sri D. Kannan against the Respondent/Telecom Department cannot be granted. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st December, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

For the I Party/Workman :

WW1 Sri D. Kannan

For the II Party/Management :

MW1 Sri T. R. Arumugam

DOCUMENTS MARKED :

For the I Party/Workman :

Ex. No.	Date	Description
W1	series (1 to 4)	Nil Xerox copy of the Service particulars of the Petitioner for various periods issued by the Management.
W2	26-12-87	Xerox copy of the letter from the Petitioner to the Management for issuance of mazdoor Card and request for re-employment.
W3	series (1 to 3)	11-03-97 Xerox copy of the letter from the Management to the Petitioner regarding his reinstatement. 06-06-97 Xerox copy of the letter from the Management to the Petitioner regarding his reinstatement. 22-05-98 Xerox copy of the letter from the Management to the Petitioner regarding issuance of Mazdoor card and re-employment.
W4	13-03-90	Xerox copy of the letter from the Management to the Petitioner with regard to issuance of Mazdoor card.
W5	19-03-90	Xerox copy of the letter from the Petitioner to the Management intimating the number of days he worked as casual labour on muster rolls.
W6	22-11-95	Xerox copy of the order of the CAT in O.A. No. 834/93 to 837/93.
W7	01-09-92	Xerox copy of the letter from the Petitioner to the Management for re-employment as Casual Labour.

For the II Party/Management :

Ex. No.	Date	Description
M1	17/23-11-89	Xerox copy of the circular issued by the Management with regard to Casual Labour (Grant of temporary status and regularisation) Scheme.
M2	11-04-85	Xerox copy of the circular issued by the Management with regard to recruitment and appointment of Casual Labourers.

नई दिल्ली, 15 फरवरी, 2002

का.आ. 859.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार द्वारा संचार विभाग के प्रबंधन के संबद्ध नियोजकों

और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 314/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[सं.एल-40012/75/98-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 859.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 314/2000) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workman, which was received by the Central Government on 15-2-2002.

[No. L-40012/75/98-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF SH. S. M. GOEL,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHANDIGARH

Ref. No. I.D. No. 314/2K

Sh. Shambhu Nath Tiwari S/o Bhagwant
Tiwari. . . Workman.

VERSUS

General Manager Telecom, Chandigarh.
. . . Management.

PRESENT :

For the Workman.—None.

For the Management.—Sh. G. C. Babbar.

Dated 21-1-2002

AWARD

The Central Govt., Ministry of Labour in exercise of powers conferred on them under Section 10(1)(d) and Sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), vide their letter No. L-40012/75/98/IR(DU) dated 30-8-2000 referred the following Industrial dispute to this Tribunal :—

“Whether the action of the management of General Manager Telecom

Chandigarh in terminating the services of Sh. Shambhu Nath Tiwari is just and legal? If not, to what relief the workman is entitled and from which date?"

2. None appeared on behalf of the workman despite notice. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Govt. for want of prosecution. Central Govt. be informed.

Dated : 21-1-2002.

S. M. GOEL, Presiding Officer
नई दिल्ली, 15 फरवरी, 2002

का.आ. 860.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं० 2, धनबाद के पंचाट (संदर्भ संख्या 65/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[सं.एल-40012/109/95-आई.आर. (डी.यू.)]
कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 860.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/96) of the Central Government Industrial Tribunal/Labour Court, No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Postal Deptt. and their workman which was received by the Central Government on 15-2-2002.

[No. L-40012/109/95-IR(DU)]
KULDIP RAI VERMA, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.
Reference No. 65 of 1996

PARTIES :

Employers in relation to the management of Post Office, Hazipur.

AND

Their Workman

APPEARANCES :

On behalf of the Workman.—None.

On behalf of the Management.—Shri C. P. Dwivedi, authorised representative.

STATE : Jharkhand. INDUSTRY : Post & Telegraph.

Dated, Dhanbad. the 31st January, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-40012/109/95-IR(DU), dated, the 30th May, 1996.

SCHEDULE

"Whether the action of the management of Post Office, Hazipur in terminating the services of Shri Ravindra Kumar Singh is legal and justified? If not, to what relief the workman is entitled to?"

2. Rule 10-B of the Industrial Disputes (Central) Rules, 1967 speaks as follows :—

"While referring an industrial dispute for adjudication to a Labour Court, Tribunal or National Tribunal, the Central Govt. shall direct the party raising the dispute to file a statement of claim complete with relevant documents, list of reliance and witnesses with the Labour Court, Tribunal or National Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute."

It is seen from the record that in spite of such direction of the Central Govt. in accordance with the statutory provision of law the concerned workman did not consider

necessary to submit any W.S. in support of his claim. On the contrary he by filing a petition dt. 8-4-97 submitted his prayer for withdrawal of the instant reference case. It is seen from the record that the management after filing W.S. has challenged the claim of the concerned workman and submitted that the instant reference case is not tenable in the eye of law. In view of the decision passed by the Central Administrative Tribunal, Calcutta. From the record it further appears that notice was sent to the concerned workman by Regd. Post with direction to appear before this Tribunal and to submit his W.S. but inspite of giving notice the concerned workman did not consider necessary to take any step. The question of withdrawal of reference in question does not arise at all without the W.S. submitted by the concerned workman. As such the petition filed by the concerned workman is a premature one for which cannot be entertained at all. The concerned workman has failed to submit any W.S. inspite of giving ample opportunities to him. His attitude and also the petition which he has filed if looked into will clearly show that he is not interested to proceed with the hearing of the instant reference. Accordingly I find no reason to drag on the case for an indefinite period. In the result a 'No dispute' Award is passed presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ. 861.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 303/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[सं.एल-40012/191/2000-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 861.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 303/2000) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in

the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workman, which was received by the Central Government on 15-2-2002.

[No. L-40012/191/2000-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF SH. S. M. GOEL,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, CHANDIGARH

Ref. No. I.D. No. 303/2000

Sh. Manoj Mahajan S/o Madan Mohan,
Workman.

VERSUS

General Manager Telecom Chandigarh.
Management.

PRESENT :

For the Workman.—None.

For the Management.—Sh. G. C. Babbar.

Dated : 21-1-2002

AWARD

The Central Govt. Ministry of Labour in exercise of powers conferred on them under Section 10(1)(d) and Sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the Act), vide their letter No. L-40012/191/2000-IR(DU) dated 31-7-2000 referred the following Industrial Dispute to this Tribunal :—

“Whether the action of the management of General Manager Telecom Chandigarh in terminating the ser- of Sh. Manoj Mahajan S/o Madan Mohan Lal is just and Legal? If not, to what relief the workman is entitled and from which date?”

2. None appeared on behalf of the workman despite notice. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Govt. for want of prosecution. Central Govt. be informed.

Dated : 21-1-2002.

S. M. GOEL, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

AWARD

का.आ. 862:— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 67/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[सं.एल-40012/227/94-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 862.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 67/95) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workmen which was received by the Central Government on 15-2-2002

[No. L-40012/227/94-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. ID 67 of 1995

Sh. Puran Dayal S/o Sh. Satya Parkash,
Village Majyat, P.O. Totu,
Distt. Shimla, (H.P.)-171011 .. Petitioner.

Vs.

Divisional Engineer,
Telecommunication (Microwave),
Maintenance, Bhoomla Estate,
Shimla-171002. Respondent.

REPRESENTATIVES :

For the Workman.—None.

For the Manageemnt.—Shri I.S. Sidhu.
604 GI/2002—15,

(Passed on 5th February, 2002)

The Central Govt. Ministry of Labour vide Notification No. L-40012/227/94-IR (DU) dated 4th August 1995 has referred the following dispute to this Tribunal for adjudication :—

“Whether the retrenchment of Shri Puran Dayal S/o Shri Satya Prakash a daily rated mazdoor by his employer Divisional Engineer Telecommunications (Microwave) Maintenance, Shimla w.e.f. 24-6-94 is legal and justified? If not what relief the workman is entitled to?”

2. None has put up appearance on behalf of the workman despite notices. It appears that workman is not interested to pursue with the present reference. In view of the above since workman is not interested to pursue with the reference, the same is returned according to the Central Government be informed.

Chandigarh.

5-2-2002.

S. M. GOEL, Presiding Officer

नई दिल्ली, 12 फरवरी, 2002

का.आ. 863:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअर इण्डिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 532/2001 को) प्रकाशित करती है, जो केन्द्रीय सरकार को 11-02-2002 को प्राप्त हुआ था।

[सं.एल.-11012/37/97-आई.आर. (सी. I)]

एम.एस. गुप्ता, अव्वर सचिव

New Delhi, the 12th February, 2002

S.O. 863.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 532/2001) of the Central Government Industrial Tribunal, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India Ltd. and their workmen which was received by the Central Government on 11-2-2002.

[No. L-11012/37/97-IR(C-1)]

S. S. GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 28th December, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

INDUSTRIAL DISPUTE NO. 532/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 136/98)
(In the matter of the dispute for adjudication under clause
(d) of Sub-section (1) and Sub-section 2(A) of Section 10
of the Industrial Disputes Act, 1947 (14 of 1947), between
the Workman Sri S. Ravi and the Management of Air India
Ltd., Chennai).

BETWEEN

Sri S. Ravi : I Party|Workman.

AND

The Regional Manager,

Air India Ltd., Chennai. : II Party|Management.

APPEARANCES :

For the Workman : M/s. G. Justin and V. Stephenraj,
Advocates.For the Management : M/s. Ramasubramaniam and
Associates, Advocates.

The Govt. of India, Ministry of Labour in exercise of
powers conferred by clause (d) of Sub-section (1) and Sub-
section 2(A) of Section 10 of Industrial Disputes Act, 1947
(14 of 1947), have referred the concerned Industrial Dispute
for adjudication vide Order No. L-11012/37/97-IR(C-I) dated
9-11-1998.

This reference has been made earlier to the Tamil Nadu
State Industrial Tribunal, where it was taken on file as I.D.
No. 136/98. When the matter was pending enquiry in that
Tribunal, the Govt. of India, Ministry of Labour was pleased
to order transfer of this case from that Tribunal to this
Tribunal for adjudication. On receipt of records from
that Tribunal, the case has been taken on file as
I.D. No. 532/2001 and notices were sent to the counsel
on record on other side, informing them about the
transfer of this case to this Tribunal, with a direction to
appear before this Tribunal on 9-3-2001. On receipt of
notice from this Tribunal, counsel on either side present with
their respective parties and prosecuted this case further.

When the matter came up before me for final hearing
on 24-12-2001, upon perusing the Claim Statement, Counter
Statement, the other material papers on record, upon perusing
the written arguments filed by the learned counsel on either
side and this matter having stood over till this date for con-
sideration, this Tribunal has passed the following :

AWARD

The Industrial Dispute referred to in the above order of
reference by the Central Government for adjudication by
this Tribunal is as follows :—

“Whether the action of the Management of Air India
Ltd., Madras in dismissing Shri S. Ravi from

service with effect from 20-7-1993 is justified? If not,
to what relief the workman is entitled?”

2. The averments in the Claim Statement of the I Party-
Workman Sri S. Ravi are briefly as follows :—

The I Party|Workman Sri S. Ravi (hereinafter refers to
as Petitioner) has joined the II Party|Management Air India
Ltd., Chennai (hereinafter refers to as Respondent) as labourer
on 3-7-1981 in the Commercial Department at Madras. The
Respondent framed a Scheme for regularisation of service
of the Casual Labourers on permanent basis with effect from
July, 1991 onwards. For the said purpose, the Respondent|
Management requested the Petitioner to furnish particulars
regarding qualification, age, etc. In the application for regu-
larisation, the Petitioner noted his date of birth as 10-7-62.
In the other relevant forms like attestation form, the date
of birth was mentioned as 10-7-1962. His correct date of
birth is 10-7-1962. In support of his date of birth, he pro-
duced school certificate dated 22-6-1986 to the Respondent|
Management showing that his date of birth is 10-7-1962.
The said certificate produced by him was given by school
authorities erroneously. Since the certificate had the same
error, the Respondent|Management wanted to verify the
genuineness of the said certificate, hence a letter was addres-
sed to the School authorities as to whether the certificate
was issued by them or not. The School authorities informed
the Respondent|Management that the certificate was not
issued by them. The Petitioner took legal advice and there-
after made an application to competent court for registration
of his date of birth as per law. After compliance of all
formalities, the date of birth of the Petitioner was registered in
accordance with the statutory provisions. Thereafter, a certi-
ficate of birth extract was produced before the Respondent|
Management by the Petitioner in support of his date of birth
as 10-7-1962. In both the School records as well as in the
birth extract, the date of birth was shown as 10-7-1962 and
there was no infirmity nor discrepancy with regard to the
date of birth, nor the Petitioner wanted to gain any undue
advantage regarding his date of birth. In spite of it, the
Respondent|Management issued a charge sheet dated 17-12-91
alleging that commission of an act is subversive of discipline.
For the said charge, the Petitioner gave a reply denying
the charges on the ground that it is vague and invalid. The
Respondent|Management having not satisfied with the reply
given by the Petitioner, appointed an Enquiry Officer and
conducted domestic enquiry. In the domestic enquiry, the
Petitioner participated, but the domestic enquiry was conducted
in a biased and prejudiced manner and also against principles
of natural justice and the rule for conducting domestic
enquiry was violated by the Enquiry Officer. There was no
fairness on the part of the Enquiry Officer and he was biased
and acted as a prosecutor. The Respondent|Management
failed to prove the charges under the enquiry. The Enquiry
Officer gave a finding that the Petitioner was guilty of charges,
though there was no adequate evidence to establish the
charges under enquiry. The findings of the Enquiry Officer
are preverse and not supported by evidence on record. Based
on the Enquiry Officer's findings, the Disciplinary Authority
passed an order dated 15-2-1994 dismissing the Petitioner
from service. Since the Respondent|Management failed to
conduct the enquiry properly and also failed to establish the
charge in the domestic enquiry, the Petitioner seeks for a
finding that the Respondent|Management failed to prove the
charge in the domestic enquiry and the enquiry was not
conducted properly. If such a finding is given, then the
Respondent|Management will be given an opportunity to
prove the charge before this Hon'ble Tribunal. The Petitioner

will also get an opportunity to establish his innocence. His dismissal from service on 15-2-1994 is based on the enquiry, which was conducted in a biased and prejudiced manner and against the rules and principles of natural justice. Hence, the order dated 15-2-1994 is illegal and liable to be set aside. The very charge itself is not maintainable on the facts and circumstances of the case, hence the dismissal order based on the domestic enquiry has to be declared as illegal. The Respondent/Management ought not to have dismissed the Petitioner from service because the Petitioner did not gain any advantage of his date of birth, which was found in the Transfer Certificate. Subsequently, the Petitioner also gave a correct birth certificate issued by the competent authority. Therefore, the Respondent/Management ought to have accepted the said document in proof of the date of birth. The statement recorded behind the back of the Petitioner cannot be relied upon by the Enquiry Officer to come to the conclusion that the Transfer Certificate dated 22-6-1986 was not issued by the School authorities. He has been denied opportunity of cross examination of the School authorities who were not cited as witnesses nor examined in the domestic enquiry. The entire enquiry was conducted in a biased and prejudiced manner and the principles of natural justice were violated, hence the same cannot be acted upon the Disciplinary Authority to punish the Petitioner. The order of dismissal from service is too severe punishment taking into consideration the alleged nature of misconduct. If the Petitioner had really taken advantage of his date of birth by producing a false certificate, then he would have been taken to task and the extreme penalty of dismissal from service ought to have been awarded. But in his case, the Petitioner had not taken any advantage with regard to his date of birth and he has also produced correct date of birth issued by the competent authority as per rules. When such is the case, the Respondent/Management is not justified in imposing an extreme penalty of dismissal from service. Therefore, the Petitioner prays that this Hon'ble Tribunal may be pleased to invoke its power under Section 11A of the Industrial Disputes Act, 1947 and impose a lesser punishment. The Petitioner prays that this Hon'ble Tribunal may be pleased to pass an Award setting aside the order of dismissal dated 15-2-1994 and consequently direct the Respondent/Management to reinstate the Petitioner in service with all benefits including continuity of service and other attendant benefits.

3. The Respondent/Management Air India Ltd. Chennai (hereinafter refers to as Respondent) had filed the Counter Statement. The averments in the Counter Statement of the Respondent are briefly as follows :—

There are no merits in the industrial dispute raised by the Petitioner pertaining to the order of dismissal issued to the Petitioner dated 15-2-1994 by the Manager, Southern India, Air India, Chennai, pursuant to disciplinary proceedings which stands confirmed by the order dated 30th May, 1997 passed by the Regional Director-India, Air India, Mumbai in appeal filed by the Petitioner in February, 1997. The order of dismissal dated 15-2-1994 passed as above was placed before the National Industrial Tribunal under Section 33(2)(b) of Industrial Disputes Act, for approval orders which were granted by the Tribunal vide order dated 30-6-94 after observing due procedure. The Petitioner, thus had recourse to all the procedural formalities and safeguards as are available in law wherein the Petitioner could have raised any grievances that he had with reference to any error in procedure followed in the disciplinary proceedings. Neither

before the National Industrial Tribunal in the approval proceedings not in the appeal filed by the Petitioner in February 1997, belatedly on advice by the Conciliation Officer, did the Petitioner raise any of the grievances which he is putting forth in the Claim Statement dated 12-3-1999 in the above industrial dispute and as such the allegations now put forward in the Claim Statement are without any basis and by way of an afterthought. Charge sheet dated 17-12-1991 was issued to the Petitioner for commission of an act subversive of discipline. In view of the fact that the Petitioner had furnished a transfer certificate purported to have been issued on 22-6-1986 by the Hindu Union Committee High School, Choolai, Chennai bearing Sl. No. 521, T. C. No. 329/86 and admission No. 4731 containing wrong particulars about the period of study and supplementing it by another letter purportedly dated 22-6-1975 addressed to the Petitioner by the School authority but on a point piece of paper offering to issue the Petitioner with fresh transfer certificate. The above two documents prima-facie, were considered to be forged and the Petitioner also on being questioned confessed to the same and it was in those circumstances that the charge sheet was issued. In the enquiry proceedings, offence to issue the Petitioner with fresh transfer certificate, which were properly constituted and properly conducted, the enquiry committee took into consideration the information given by Mr. Parthasarathy, the Personnel Officer, who had investigated and obtained information from Mr. Govindan the Headmaster of the School and also the evidence of Mr. Sambandamurthy, Senior Assistant of the School, who deposed as management witness. Placing reliance upon the evidence of Mr. Sambandamurthy to the effect that the transfer certificate dated 22-6-1986 contained the signature of one Mr. Ramachandran, who was not the then Headmaster and that one Mr. C. Krishnaswamy was the Headmaster of the School on the relevant date and also that the admission No. 4731 appearing on the transfer certificate had not been given to the Petitioner but to another student by name, Sri S. Deenadayalan and further that the letter dated 22-6-1975 also suffered from apparent irregularities, not being on the letter head and not having been signed by the person who was functioning as Headmaster on the particular date and taking into consideration of the totality of the evidence, the Enquiry Committee found the Petitioner guilty of the charge and held that the charge against him to be proved. The Manager-Southern India, Air India as Disciplinary Authority passed the order dated 15-2-1994 after issuing show cause notice to the Petitioner observing due procedure and concurring with the findings of the Enquiry Committee. The penalty of dismissal was awarded in view of the serious nature of the misconduct and on account of the absence of any extenuating or mitigating circumstances. The gist of the charge is not falsity of date of birth as projected by the Petitioner in his Claim Statement, but furnishing of forged documentation which would reflect on the Petitioner's character and would hence be subversive of discipline. The repeated claims made by the Petitioner that he did not gain any advantage with regard to his date of birth is not relevant. The vague pleas raised for the first time in the Claim Statement dated 12-3-1999 that the enquiry was conducted in a biased and prejudiced manner and that the Petitioner was denied opportunity of cross-examining the School authorities are without substance. At no stage of the enquiry was any protest made with regard to the enquiry proceedings and the record would show that the defence counsel Mr. D. Thirugnanavel, Traffic Assistant, S. T. No. 44983 who was nominated to help the Petitioner as employee counsel, expressed specifically that he had no

questions to ask Mr. Sambandamurthy. Even in the petition under Section 21(A) of the Industrial Disputes Act filed in October, 1994 by the Petitioner, the allegation of bias is not levelled. There is also no complaint regarding absence of opportunity to cross-examine as is not forwarded now. The conduct of the Petitioner was taken into due consideration during the disciplinary proceedings and the findings of his being guilty was arrived at and penalty awarded in properly constituted and conducted disciplinary proceedings observing the necessary and due formalities. The conduct of the Petitioner in putting forth frivolous allegations at this stage also would merit due consideration. In the circumstances, the Claim Statement of the Petitioner is totally bereft of merits. The facts and circumstances that the appeal filed belatedly in 1997 against the orders of the Disciplinary Authority dated 15-2-1994 was also duly considered and order dated 30-5-97 was passed would show that the disciplinary proceedings were in no way biased or vitiated. The punishment awarded for producing false documentation, which has a bearing on the integrity of the employee concerned is also reasonable and appropriate and the grievance that the punishment is excessive, is also without substance. Therefore, there are no merits whatsoever, in the industrial dispute raised as well as in the Claim Statement filed by the Petitioner dated 12-3-99. It is, prayed that appropriate orders may be passed confirming the order of dismissal dated 15-2-1994 which stands confirmed by order dated 30th May, 1997 by the Appellate Authority in the interest of justice.

4. It is the common, plea of the I Party|Petitioner and the II Party|Respondent in their respective Claim Statement as well as Counter Statement that the I Party|Workman Sri S. Ravi was dismissed from service by the II Party|Respondent Management on 15-2-1994 and not as mentioned in the Schedule of Reference as 20-7-1993. So, in the above mentioned Schedule of Reference, the date mentioned as 20-7-1993 has to be read as 15-2-1994.

5. When the matter was taken up for enquiry, by the consent of the counsel on either side, documents on either side have been marked as Ex. W1 to W5 and Ex. M1 to M24. No one has been examined as witness on either side. The learned counsel on either side have filed their respective written arguments.

6. The Point for my consideration is—

“Whether the action of the Management of Air India Ltd., Madras in dismissing Shri S. Ravi from service with effect from 15-2-1994 is justified? If not, to what relief the workman is entitled?”

Point :—

It is admitted that the I Party|Workman Sri S. Ravi was appointed as a loader for a period of six months on probationary basis vide an order of appointment dated 1-7-1991, the xerox copy of the same is Ex. W1. It is also admitted that the Petitioner Sri S. Ravi produced a copy of the transfer certificate dated 22-6-1986, xerox copy of the same is Ex. M2, in proof of his age and educational qualification. As per the transfer certificate, his date of birth was 10-7-1962 and date of hearing the School at VIII Standard was 16-4-1986 i.e., as his age of 24 years and 8 months. Hence, the Personnel Officer, Southern India of the II Party|Management questioned him regarding his period of study and genuineness of the transfer certificate. The Petitioner explained him that his

period of study was wrongly mentioned as 1985-86 instead of 1975-76 and he had also assured that he would get it corrected by the school authorities. Subsequently, the Petitioner|Workman produced a letter dated 22-6-1975, xerox copy of the letter is marked as Ex. M3, purported to have been issued by the Hindu Union Committee Higher Secondary School, Choolai to that effect that the Head Clerk of the said School wrongly noted his study period as June, 1985 instead of June, 1975. Since the transfer certificate number and admission number in Ex. M2 does not correlate with the particulars in letter dated 22-6-1975 (Ex. M3), the Personnel Officer of the Respondent|Management called upon the Petitioner|Workman to explain these discrepancies. Thereupon, the Petitioner admitted that both the transfer certificate Ex. M2 and the letter dated 22-6-1975 Ex. M3 are forged documents. The Personnel Officer of the II Party|Management had also written a letter dated 16-11-1991, the xerox copy of that letter is marked as Ex. M1, enclosing the Ex. M2 and M3 to the Headmaster of the Hindu Union Committee Higher Secondary School, Choolai, requesting him to verify their records and advise about the bona fides of the said certificates. The Headmaster sent a reply dated 20-11-1991, the xerox copy of the same is marked as Ex. M4, stating that the transfer certificate submitted by the I Party|Workman is a bogus one. In view of the above, the II Party|Management issued a charge sheet dated 17-12-1991 Ex. W3, to the I Party|Workman for a commission of an act subversive of discipline and calling upon him to submit his explanation. Upon request made by the I Party|Workman vide letters dated 27-12-1991 and 23-1-1992, in order to give an opportunity to him, twice the time was extended by the II Party|Management for submitting his explanation. The xerox copies of those letters are Ex. M6 and M8 respectively. The Petitioner intend of submitting his explanation to the charge sheet issued to him, sent a letter dated 10-5-1992 along with a certificate of birth issued by the Corporation of Madras, requesting the Management to treat the said certificate as proof of his age. The xerox copy of the letter dated 10-3-92 sent by the Petitioner|Workman is Ex. M9 and the xerox copy of the birth certificate issued by the Corporation of Madras is Ex. M10. Hence, the Respondent|Management passed an order dated 2-6-1992, the xerox copy of the same is Ex. M11, constituting an enquiry committed to enquire into the charges levelled against the Petitioner|Workman. The Petitioner was informed about the same vide letter dated 4-6-1992. The xerox copy of the letter is Ex. M12. The Enquiry Committee vide letter dated 3-8-1992 informed the Petitioner about the date, time and venue of enquiry which was also acknowledged by the Petitioner. The xerox copy of that intimation to the Petitioner is Ex. M13. The Respondent|Management has filed the Xerox copies of the entire enquiry proceedings as Ex. M18. All these exhibits have not been disputed by the Petitioner|Workman Sri S. Ravi. All the management documents have been marked as exhibits with the consent of the learned counsel for the Petitioner|Workman. A perusal of the enquiry proceedings clearly shows that the I Party|Workman was furnished with the copies of all the documents and proceedings were explained to him and ample opportunities were given to him to defend his case effectively and he has also taken part in the domestic enquiry ably assisted by defence representative and the defence representative has given full opportunity to cross-examine the management witnesses and he had also done so. Further, it is seen that the Enquiry Committee conducted the enquiry in accordance with the principles of natural justice. The personnel Officer of the Respondent|Management Mr. Parthasarathy was examined as MW1 and the management exhibits were marked through him. It is also seen from the enquiry pro-

ceedings that those exhibits were explained to the Petitioner in Tamil and he has also accepted that he had seen all the documents and understood the same. Dupring his evidence, Mr. Parthasarathy explained to the Enquiry Committee about the charges levelled against the Petitioner/Workman, his initial suspicion regarding the forged documents, verification with the Headmaster of the school and subsequent admission made by the Petitioner regarding the forgery. He had also explained that the Petitioner had deliveratly submitted the forged documents, even after the warning given in the application (Ex. M24). Ex. M24 is the xerox copy of the application given by the Petitioner Sri S. Ravi to the Respondent/Management giving particulars about him mentioning his date of birth, educational qualification. It is also seen from the enquiry proceedings Ex. M18 that MW1 Mr. Parathasarathy was not cross examined either by the Petitioner or by his defence representative. They have statd before the Enquiry Committee that they do not have any questions to cross examine him. The Respondent/Management sent a letter dated 14-10-1992, summoning the Headmaster of the Hindu Union Committee Higher Secondary School to give evidence in the enquiry. The xerox copy of that letter is Ex. M16. Ex. W4 is a reply dated 15-12-1992 sent by the Headmaster of the Hindu Union Committee Higher Secondary School, expressing his inability to attend the enquiry, informing the Respondent/Management that he will depute one Mr. Sambandamurthy, the Senior Assistant of the School to the enquiry. The said Mr. Sambandamurthy, Senior Assistant of the School was examined as MW2 in the enquiry. It is seen from his evidence that he had categorically deposed that admission No. 4731 in the transfer certificate dated 22-6-1986 does not pertain to Mr. S. Ravi and it is actually belonged to Sri S. Deenadayalan. It is seen from his evidence available in the enquiry proceedings that he had further deposed that a letter dated 22-6-1975 was not signed by the then Headmaster of the School and it is also not in the letter-head of the School. When an opportunity was given to the Petitioner, the charge sheeted employee and also his defence representative to cross examine MW2, they have chosen not to cross examine him. It is also available in the enquiry proceedings that the Petitioner had admitted before the Enquiry Committee that he had not studied in the Hindu Union Committee Higher Secondary School and the transfer certificate was produced by a person known to him. Ex. M17 is the xerox copy of the statement dated 6-11-1992 submitted by the Petitioner before the Enquiry Committee, wherein he had categorilly admitted that he had studied only upto II Standard in the Corporation School at Perambur and he was unable to continue beyond that level due to his family background. After considering the evidence available on record and also the oral evidence let in, in the enquiry, the Enquiry Committee submitted a report dated 18-1-1993 holding that the charge sheeted employee, the Petitioner herein Sri S. Ravi had produced bogus certificates in support of his proof of age. Xerox copy of the report is Ex. W5. Based on the findings of the Enquiry Committee, the Respondent/Management issued a show cause notice dated 20-7-1993 to the Petitioner aloig with the xerox copy of the report submitted by the Enquiry Committee calling for his explanation. Xerox copy of the show cause notice dated 20-1993 is Ex. M19. The Petitioner submitted his detailed explanation dated 13-8-1993, wherein he had once again admitted that the transfer certificate and the letter dated 22-6-1975 are bogus. The xerox copy of that letter is Ex. M20. In that letter, he has given explanation that due to his illiteracy, he was not aware of the same and that certificate was given to him by one of his known person and only in the enquiry, he was informed that the said-school certificate was bogus. He has further stated that at the advice of his friends, he met one

Lawyer and got a correct certificate with the help of the Court and has enclosed the same for ready reference. Since the explanation given by the Petitioner was not satisfactory and considering the graveness of the misconduct, the Respondent/Management passed an order of dismissal dated 15-12-1994 under Ex. W2 dismissing the Petitioner from the service of the Respondent. The Petitioner had filed an appeal before the Regional Director (India), Commercial Department, Air India Ltd., Mumbai, stating that the punishment given was too severe and he requested the Appellate Authority to consider his case sympathetically. The xerox copy of that appeal is Ex. M21. The Appellate Authority passed an order dated 30-5-1997 continuing the dismissal order passed by the Disciplinary Authority against the Petitioner finding that the misconduct committed by the Petitioner was grave in nature. Ex. M23 is a xerox copy of the application under Section 33(2)(B) of the Industrial Disputes Act, 1947 filed by the Respondent/Management before the National Industrial Tribunal, Mumbai, seeking approval of the order of dismissal. The National Industrial Tribunal, Mumbai has accorded the approval as sought for by the Respondent/Management in that petition against the Petitioner/Workman Sri S. Ravi. The Respondent/Management has filed a xerox copy of that judgement also into Court. A perusal of the same shows that for the Petitioner/Workman one advocate Sri G. Justin has taken part in the enquiry before the National Industrial Tribunal, Bombay, in that approval application. It is seen from that order passed by the National Industrial Tribunal, Mumbai, in that approval application that the counsel for the Petitioner/Workman had raised all the defence he has raised before this Tribunal in the Industrial Dispute stating that the Petitioner was not given an opportunity to cross examine the witnesses examined on behalf of the management and hence, the enquiry is vitiated. All these contentions were not accepted by the Nationall Industrial Tribunal, Mumbai. From a perusal of the enquiry proceedings, it is seen that the said stand taken by the Petitioner that he was not given proper opportunity to cross examine the management witnesses and the Enquiry Committee has given a finding without any evidence that the charges levelled against the Petitioner is proved are incorrect. It is also incorrect to state that the enquiry was conducted by the Respondent/Management not in accordance with the principles of natural justice. From the materials available in this case, it is seen that the Petitioner has submitted a bogus transfer certificate and in support of the same, a bogus covering letter knowing fully well that they are bogus documents he has pressed them into service to make the Management to believe and act upon that document. It is proved in the enquiry with reliable evidence that those documents are bogus and were not issued by the School concerned and what that the Petitioner has submitted to the Respondent/Management as a proof of his educational qualification is also false. From all these proved facts, it is seen that the Petitioner had committed an act of misconduct subversive of discipline under the provisions of model standing orders as stated in the charge sheet. Under such circumstances, it is seen that it is incorrect to state that the domestic enquiry was conducted in a biased and prejudicial manner and also against the principles of natural justice and the rule for conducting domestic enquiry was violated by the Enquiry Officer and there was no fairness on the part of the Enquiry Officer and that the Petitioner was not given sufficient opportunity to establish his innocence.

7. As it is contended by the Petitioner in his Claim Statement the learned counsel for the Petitioner has raised an

argument in his written arguments stating that the punishment awarded to the Petitioner as dismissal from service is too severe and the Petitioner having put in ten years of service and he is about to be regularised as a permanent employee, the dismissal from service at this juncture put him untold sufferings, because he cannot seek employment anywhere and hence the Tribunal can invoke its powers under Section 11A of the Industrial Disputes Act, 1947 and reduce the punishment from dismissal to any other lesser punishment. It is stated in the written argument filed by the learned counsel for the Respondent|Management that the request of the I Party|Workman regarding quantum of punishment is concerned, if any leniency is shown in this case, it would amount to putting premium on an act of cheating, dishonesty and fraud. In view of the established fact of the I Party has committed fraud and forgery by submitting forged transfer certificate, no leniency shall be shown in awarding punishment for a commission of such grave offence. He has also cited a judgement of Supreme Court as well as the judgement of Gujarat High Court for his contention that such misconducts of employees has to be condemned. In a case reported as AIR 1996 SC 686 Union of India Vs. M. Baskar, the Hon'ble Supreme Court has held that "if by committing fraud any employment is obtained, such fraudulent practise cannot be permitted to be countenanced by any Court of Law. No Court should be a party to the perpetuation of the fraudulent practice." In a case reported as 2000 33 LIC 2433, the Hon'ble Gujarat High Court has held that "a person who got employment on the basis of forged document, if allowed in the employment, what he will do in future is a matter of realisation. It was a just and reasonable approach of the appointing authority to terminate the services of the petitioner, a probationer." From these decisions of the Courts, it can be held that the decision taken by the Respondent|Management in dismissing the petitioner from service justified and it cannot be said that it is a severe punishment and it is disproportionate to the gravity of the misconduct committed by the Petitioner|Workman. From the facts available in this case, it is seen that the Petitioner has committed fraud and forgery by submitting a forged transfer certificate and in order to substantiate the same, he has also submitted an another letter dated 22-6-1975 to that effect that the Head Clerk has wrongly noted the study period as June, 1985 instead of June, 1975, which is also a forged one. On the other hand, he himself has admitted in evidence that he has not studied in that School at all and his educational qualification is not VIII standard but only II standard. All these things have been done by the Petitioner only to cheat the Respondent|Management to continue in the employment which is proved to be misconduct committed by the Petitioner|Workman as an act subversive of discipline under the provisions of Model Standing Orders. So, the Disciplinary Authority has properly passed an order dismissing the Petitioner from service. It cannot be said that it is disproportionate to the gravity of the misconduct committed by the Petitioner|Workman. The punishment awarded for production of false documentation, which has a bearing on the integrity of the employee concerned is reasonable and appropriate. The grievance that the punishment is excessive cannot be accepted. The point is answered accordingly.

8. In the result, an Award is passed holding that the action of the Management of Air India Ltd. in dismissing the services of Sri S. Ravi from service with effect from 15-2-1994 is justified. Hence, the concerned workman is not entitled to any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th December, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None.

DOCUMENTS MARKED :

For the I Party|Workman :—

- | Ex. No. | Date | Description |
|---------|-----------|--|
| W1 | 1-7-91 | Original appointment order of the Petitioner. |
| W2 | 15-2-94 | Original order of termination issued to the Petitioner. |
| W3 | 17-12-91 | Original charge sheet issued to Petitioner. |
| W4 | 15-10-92 | Xerox copy of the letter from the Headmaster of Hindu Union Committee School to the Respondent Management. |
| W5 | 18-1-1993 | Original enquiry findings. |

For the II Party|Management :—

- | Ex. No. | Date | Description |
|---------|----------|---|
| M1 | 16-11-91 | Xerox copy of the letter from the Respondent to the Headmaster of HM HUC Hr. Secondary School. |
| M2 | 22-6-86 | Xerox copy of the transfer certificate of the Petitioner. |
| M3 | 22-6-75 | Xerox copy of the letter from Headmaster to the Petitioner. |
| M4 | 20-11-91 | Xerox copy of the letter sent by Headmaster of the School to the Management. |
| M5 | 2-12-91 | Xerox copy of the letter from the Personnel Officer to Manager SI of the Respondent Management. |
| M6 | 27-12-91 | Xerox copy of the letter from Petitioner to the Respondent Management. |
| M7 | 7-1-92 | Xerox copy of the letter from Management to Petitioner Workman. |
| M8 | 23-1-92 | Xerox copy of the letter from Petitioner to Respondent Management. |
| M9 | 10-3-92 | Xerox copy of the letter from Petitioner to Respondent Management. |
| M10 | 6-3-92 | Xerox copy of the birth certificate of Petitioner. |
| M11 | 2-6-92 | Xerox copy of the order of Respondent to Petitioner. |
| M12 | 4-6-92 | Xerox copy of the letter from Management to Petitioner. |
| M13 | 3-8-92 | Xerox copy of the enquiry notice to the Petitioner from Respondent Management. |
| M14 | 21-8-92 | Xerox copy of the enquiry notice to the Petitioner from Respondent Management. |

M15 14-10-92 Xerox copy of the enquiry notice to the Petitioner from Respondent|Management.

M16 14-10-92 Xerox copy of the letter from management to the Headmaster of the Hindu Union School.

M17 6-11-92 Xerox copy of the letter from Petitioner to Respondent|Management.

M18 8-8-92 Xerox copy of the enquiry proceedings.

M19 20-7-93 Xerox copy of the show cause notice.

M20 13-8-93 Xerox copy of the letter from Petitioner to the Respondent|Management.

M21 Feb. 97 Xerox copy of the letter from Petitioner to the Respondent|Management.

M22 30-5-97 Xerox copy of the order from Respondent to the Petitioner.

M23 29-3-94 Xerox copy of the application under Section 33(2)(b) filed by the Respondent|Management before the National Industrial Tribunal at Mumbai.

M24 6-7-90 Xerox copy of the application filed by Petitioner to the management.

नई दिल्ली, 12 फरवरी, 2002

का.आ. 864:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन एयर लाइंस लिमिटेड के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, मुम्बई के पंचाट (संदर्भ संख्या कम्प.न. एन.टी.बी. 1/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/02/2002 को प्राप्त हुआ था।

[सं.एल.-20025/2/2002-आई.आर.(सी.-I)]

एस.एस. गुप्ता अव्वर सचिव

New Delhi, the 12th February, 2002

S.O. 864.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. Comp. No. NTB 1/99) of the Central Government Industrial Tribunal I, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Air Lines Ltd. and their workman, which was received by the Central Government on 11-02-2002.

[No. L-20025/2/2002-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL MUMBAI

PRESENT :

Shri Justice S.-C. PANDEY, Presiding Officer

COMPLAINT NO. NTB-1 OF 1999

(Arising Out of Ref. No. NTB-1 of 1990)

PARTIES :

Captain Prince Dandons.—Complainant.

V/s.

Indian Airlines Ltd.—Opp. Party.

Appearances :

For the Complainant.—Shri Umesh Nabar, Advocate.

For the Opp. Party.—Mrs. Pooja Kulkarni, Advocate.

STATE : : MAHARASHTRA.

Mumbai, dated the 31st day of January, 2001

AWARD

A complaint was filed by Captain Prince Dandons against the Indian Airlines Ltd. Under Section 33-A of the Industrial Disputes Act 1947 read with items No. 5(9)(4)(d) and (f) schedule V thereof.

The case was taken up today at instance of the complainant who has filed an application today for withdrawal of this complaint as the dispute between the parties is fully and finally settled. The complainant was present in person and he was identified by his counsel Shri. Umesh Nabar, Advocate. He stated that he does not want to pursue the complaint. In view of the statement made by the complainant the complaint NTB No. 1 of 1999 is dismissed as withdrawn.

JUSTICE S. C. PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2002

का.आ. 865 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट (संदर्भ संख्या 99/96 को) प्रकाशित करती है, जो केन्द्रीय सरकार को 13-02-2002 को प्राप्त हुआ था।

[सं. एल.-12012/168/95-आई.आर. (बी.-II)]

सी. गंगाधरन, अध्वर सचिव

New Delhi, the 14th February, 2002

S.O. 865.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 99/96) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 13-2-2002.

[No. L-12012/168/95-IR(B-II)]

C. CHANGADHARAN, Under Secy.

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH

Case No. ID 99/96

Smt. Adarsh Kumari, House No. 2243 Sector 22, Chandigarh. Applicant.

Versus

Regional Manager, Punjab National Bank, Sector-17, Chandigarh. Respondent.

APPEARANCES :

For the workman : Shri M. C. Arora.

For the Management : Shri Rajesh Gupta.

AWARD

(Passed on 7th February, 2002)

The Central Government vide gazette notification No. L-12012/168/95-IR(B.II) dated 16th of October 1996 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Punjab National Bank represented through Regional Manager, Regional Office, Chandigarh Bank Square, Sector-17, Chandigarh in terminating the services of Smt. Adarsh Kumari Sobti, Cashier-cum-Clerk in their Sector-22, Chandigarh Branch w.e.f. 16-11-88 is just and fair? If not to what relief Smt. Adarsh Kumari Sobti is entitled to and from which date?”

The applicant in the claim statement has pleaded that applicant proceeded on medical leave w.e.f. 12-8-87 to 26-8-1987 for 15 days but due to ill luck she could not join duty after expiry of 15 days and sent further medical certificate. The branch manager asked her to submit medical certificate issued by the Chief Medical Officer, Amritsar but she had not sent that certificate. She sent further certificates upto 30-11-1988. She for the first time submitted her joining report on 7-12-1988 but she was not allowed to join the duty on the pretext that she had been retired voluntarily from service of the bank w.e.f. 16-11-1988. It is alleged that the action of the management in treating her voluntarily retired from the service is illegal and violative of the provisions of Bipartite Settlement dated 10-4-1989 and at no stage there was any intention of the applicant not to join the bank. Thus the order dated 16-11-1988 is arbitrary, illegal and violative of the service conditions of the applicant and the applicant deserves to be reinstated in service with full back wages and other consequential benefits.

3. In written statement the preliminary objection has been taken that the applicant was voluntarily retired from service in accordance with the provisions of Bipartite Settlement by the competent authority. Moreover the applicant raised the dispute after about six years. In fact the applicant proceeded on leave for 15 days on medical grounds w.e.f. 12-8-1987. The Chief Manager advised Smt. Sobti to get herself examined from CMO and submit medical certificate but she did not send any certificate. She further applied for medical leave from 27-8-1987 to 10-9-1987 with the medical certificate of Dr. Naresh Bhardwaj instead of the medical certificate of CMO, Amritsar. She again sent leave application for 30 days without the certificate of CMO. The Chief Manager vide his letter dated 13-2-1988 again advised to submit medical certificate and to report for duty but the applicant submitted a letter dated 24-2-1988 requesting for leave up to 10-3-1988. The Chief Manager wrote several letters but there was no response from the applicant and ultimately she was retired voluntarily after allowing her 30 more days to join duty. It is stated that the said letter dated 16-11-1988 was delivered to her at her address. It was thus pleaded that the reference be rejected as she was not entitled to any relief.

4. The applicant filed rejoinder reiterating the claim made in the claim statement.

5. The applicant in evidence filed her own affidavit Ex. W1 and also documents Ex. W2 to Ex. W26. The applicant admitted in cross-examination of having received all the letters of the management sent to the applicant advising her again and again to submit medical certificate from the Chief Medical Officer Amritsar. It is also admitted that she was employed in private undertaking for one year after her retirement by the bank and after that her parents are maintaining her as her father is getting pension. In rebuttal the management filed the affidavit of P. N. Soi Ex. M10 and documents Ex. M11 to M17. In cross-examination it is admitted by the witness of the management that no enquiry was conducted against the applicant by the management.

6. I have heard both the parties and gone through the record of the case and also the written arguments submitted by them.

7. It is admitted by both the parties that the applicant had sent the applications for excusing her absence on the ground of illness. It is admitted by the applicant that she was advised by the bank to get herself examined from the CMO

Amritsar and submit the Medical Certificate. It is also admitted by the applicant that she never submitted the medical certificate from the C.M.O. Amritsar about her illness. She was voluntarily retired from the service of the bank under the Bipartite settlement on 16-11-1988 when she failed to join duty within 30 days of the notice. It is admitted case of the parties that no enquiry was conducted against the applicant. It is argued on behalf of the applicant that the applicant replied to the notice of retirement on 7-10-1988 which was handed over by the sister of the applicant to Mr. Kaplish. The said Mr. Kaplish was not produced by the management to deny the ascertainment of the applicant. It was further argued on behalf of the workman that clause XVI of the 4th Bipartite Settlement is illegal and unconstitutional in view of the judgement of the Hon'ble Supreme Court in the case of *Upton India Ltd. Vs. Shammi Bhan* reported in 1998 (2) Service Cases Today page 169. It is held in the aforesaid judgement that unless an opportunity of hearing is given to such a workman to enable him to justify his absence, the automatic termination of services on the basis of overstay would be illegal. It is further argued that retirement of the applicant amount is to retrenchment and the management has not complied with the provisions of Section 25-F of the I.D. Act 1947, so the applicant is entitled to reinstatement with all consequential benefits.

8. On the other hand the arguments on behalf of management is that the applicant was deemed to be voluntarily retired under para 17 of the Bipartite Settlement and her services were not retrenched. The applicant remained on long absence without getting her leave sanctioned and without producing the certificate from the C.M.O. Amritsar. Applicant neither sent any reply to the show cause notice nor resumed her duties within 30 days and the applicant was rightly retired from service. The management has relied on the judgement of the Hon'ble Supreme Court in the case of *Syndicate Bank Vs. S. B. Staff Association* reported in JT 2000(5) S.C. 243 wherein it has been held by the Hon'ble Supreme Court that there is no violation of principle of natural justice and there is no necessity of holding any departmental enquiry in case of an employee is deemed to have been voluntarily retired under the provisions of para 17 of the Bipartite Settlement.

9. I have carefully gone through the arguments of the learned representatives of the parties. It is admitted fact that the management has not conducted any enquiry against the applicant. It is settled law by the Hon'ble Supreme Court that unless an opportunity of hearing is given to such a workman to enable him to justify his absence, the automatic termination of services of the basis of overstay would be illegal. It is also not proved by the management that the reply to the show cause notice was not given by the applicant through her sister to one Shri. Kaplish. The management has not produced the said person in the witness box to deny the same. The judgement cited by the management in the case of *Syndicate Bank (Supra)* of the Hon'ble Supreme Court is distinguishable as in the above noted case, the employee resigned from the Bank and on the humanitarian ground he was taken back in service and after that he absented from the Bank thus showing his intentions not to work in the Bank and the notice was also refused. The notice was returned with the report of the postal authorities that he refused to receive the same and reply was not sent by the workman concerned to that show cause notice. In the case in hand, the statement of the applicant was not assailed by the management that she had sent the reply to the show cause notice through her sister and given to one Mr. Kaplish an Officer 604/GI/2002—16

of the bank. In these circumstances, the management was bound to hold enquiry in the case of the applicant before treating her voluntarily retired from the service. As no such enquiry was held by the management, the applicant can not be treated as voluntarily retired from the service. It is also an admitted fact that the applicant raised the dispute after about six years, and remained gainfully employed for one year with some private firm. In the given situation the applicant is not entitled to the backwages and continuity of service.

10. In view of the above discussions made in the earlier paras, the order dated 16-11-1988 treating the applicant as voluntarily retired from the services of the bank is set aside. The applicant is entitled to be reinstated in the service without any backwages and continuity of service is allowed only for pensionary benefits. The reference is answered accordingly. Central Government be informed.

Chandigarh.

7th Feb. 2002.

S. M. GOEL, Presiding Officer

नई दिल्ली, 14 फरवरी, 2002

का.आ. 866 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबन्धन के संबंध में निदेशों और उनके कर्मचारियों के बीच, अनुवृत्ति में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 118/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-2-2002 को प्राप्त हुआ था।

[सं. एल.-12012/271/98-आई.आर. (बी.-II)]

सी. गंगाधरण, अवसर सचिव

New Delhi, the 14th February, 2002

S.O. 866.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 118/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 13-02-2002.

[No. L-12012/271/98-IR(B-II)]

C. GANGADHARAN, Under Secy.
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 31st December, 2001

PRESENT :

K. Karthikeyan, Presiding Officer.

INDUSTRIAL DISPUTE NO. 118/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 78/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (I) and sub-section 2(A) of Section 10

of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri G. Muhil Raj and the Management of Syndicate Bank.)

BETWEEN

Sri G. Muhil Raj, I Party/Workman

AND

The Assistant General Manager, II Party/
Syndicate Bank, Management
Chennai.

APPEARANCE :

For the Workman : M/s. D. Hariparanthaman, V. Ajoy Khose & P. Vijendran, Advocates.

For the Management : M/s. T. S. Gopalan & Co., Advocates.

The Government of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-12012/271-98 IR (B-II) dated 20-04-1999.

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, where it was taken on file as I.D. No. 78/99. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tribunal, the case has been taken on file as I.D. No. 118/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 31-01-2001. On receipt of notice from this Tribunal, counsel on either side present with their respective parties and prosecuted this case further.

When the matter came up before me for final hearing on 26-12-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the documentary evidence let in on the side of the II Party/Management, upon hearing the arguments advanced by the learned counsel on either side and this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Government for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Syndicate Bank to dismiss the services of Shri G. Muhil Raj, is justified ? If not, what relief he is entitled to ?”

2. The averments in the Claim Statement of the I Party/Workman Sri G. Muhil Raj are briefly as follows :—

The I Party/Workman (hereinafter refers to as the Petitioner) joined the services of II Party/Management Syndicate

Bank as a Clerk in 1977. Though he was a Clerk by designation his services were utilised by the bank as a Cashier on rotation basis. Lastly, the Petitioner was working in Dindigul Main Branch of the II Party/Syndicate Bank. While so, on 2-12-91 one Sri Balavenkatraman came to the branch and deposited a sum of Rs. 1000 along with cash remittance challan (credit slip) and pass book into the S.B. account of one Smt. T. Palaniammal. The Petitioner received the cash and verified the denomination. He also recorded the amount remitted and the S.B. Account No. in the scroll at S. No. 26. When he was about to put the cash received stamp on the challan, the person came for remitting the amount informed the Petitioner that the account holder has sent a person to get back the money brought for deposit and therefore, he requested the Petitioner to return back the money. The Petitioner shouted at him and asked why he was asking to give back the money when the process were in the half way. For which the person concerned replied the Petitioner to score out the entries and to return back the money to him. Therefore, the Petitioner returned the money and the passbook. Since the above transaction was not completed and the money and passbook were returned to the customer's agent who came on that day for remittance, the Petitioner score out the entry made in the scroll. After the close of all transactions for that day, the scroll officer had countersigned in the main scroll sheet written by the Petitioner. Since the money was returned back to the Customer's agent, the Petitioner rightly score out the entry in the scroll maintained by him. That was why there was no entry in this regard in the scroll maintained by the Scroll Officer as well as in the sub-day book. When this being the real facts and events, the Petitioner was issued with a charge memo cum suspension order dated 29-6-92 wherein it was alleged that while he was working as a Cashier, at Dindigul main branch on 2-12-91 Sri Bala Venkatraman deposited Rs. 1000 in S.B. Account No. 3766 of Smt. T. Palaniammal customer of the bank along with credit slip, that after making necessary entries in the Cashier's scroll, he returned the counterfoil produced by the said party that the concerned S.B. Clerk made entries in the customer's pass book and in the S.B. ledger folio, that later on he unauthorisedly and in order to misappropriate customer's money, cut entries made in the cashier's scroll and destroyed the credit slip, that as there was no credit slip, entries were not made in the sub-day book, that subsequently when Sri Bala Venkatraman came to the branch on 24-1-92, for remitting cash and when he tendered the pass book the earlier entry of Rs. 1000 was cancelled and that in view of this the party lodged a complaint as an amount of Rs. 1000 deposited into her account was not credited. It was further alleged that he had not only misappropriated the customer money of Rs. 1000 but also tampered the cashier's scroll and destroyed the credit slip and it was an act prejudicial to the interest of the bank and a gross misconduct under 19.5(J) of the Bipartite Settlement. After issuing charge memo, the II Party/Management (hereinafter refers to as Respondent) issued an amendment to the charge sheet by an order dated 9-9-92, by which the charge sheet was materially and substantially altered to the prejudice of the Petitioner with a mala fide intention to make him as a scape goat and to save the Clerk and Officer of S.B. section. Without giving an opportunity to the Petitioner to submit his explanation, the Respondent straightaway ordered for an enquiry into the charges in a pre-determined manner, which is contrary to the procedure contemplated in the Bipartite Settlement. The enquiry was fixed on 16-12-92. Since the workman was not well and, hospitalised, he sent the telegram dated 14-12-92 and requested for postponement of the enquiry. He had also submitted a letter dated 16-12-92 through Sri Kannian directly

and prayed for postponement of enquiry on medical grounds. The request of the workman was objected to by the Management representative. However, the Enquiry Officer adjourned the enquiry to 6-1-93. Then the enquiry was fixed to 23-2-93 the Petitioner participated in the enquiry. But, he was not able to go on with the enquiry as his defence representative had sent a telegram to postpone the enquiry to next day and the enquiry was held on 24-2-93. Ex. M1 to M9 were marked. The enquiry was fixed again on 3-5-93 at Dindigul. Though the Petitioner came with the Defence representative to Dindigul on 2-5-93 night and stayed in a lodge to attend the enquiry on next day, the Petitioner developed with chest pain during midnight and he was immediately taken to a private Doctor. As per the advise of the private Doctor, the Petitioner got himself admitted in Government hospital and was taking treatment there. So, he could not attend the enquiry on 2-5-93. All these facts were duly informed to the Enquiry Officer on 3-5-93 by the defence representative and he prayed for an adjournment. But the Enquiry Officer allowed the Management representative to examine the management witnesses in the absence of the Petitioner. The objections raised by the defence representative were not properly considered. On the next day, the defence representative produced four documents, to substantiate that witnesses should be examined in the presence of the workman. If not, it will be a violation of principles of natural justice. The defence representative's request, to examine the two material witnesses namely Smt. T. Palaniammal and Sri Bala Venkatraman at the first instance was also rejected by the Enquiry Officer on the ground that the Management representative was at liberty to examine the witnesses as he desired. After examining MW1 and MW2 on 4-5-93 and MW3 and MW4 on 5-5-93 at the request of the management representative for examination of two other witnesses, the complainants, the enquiry was adjourned to 15-6-93. On that day, the Management representative informed that he could not produce the other two witnesses, and therefore, he was closing his side, though it was objected to by the defence representative as the non-examination of those two witnesses would deprive his right to cross examination. The Petitioner examined four witnesses including himself and marked Ex. D1 to D4. After the submission of written arguments by the Management representative and the defence representative on 30-7-93 and 01-10-93 respectively, the Enquiry Officer submitted his findings dated 31-1-94 holding that the Petitioner was guilty of the charges. It is perverse, biased and one sided. Without giving an opportunity to the Petitioner, to submit his explanation for the findings of the Enquiry Officer, the Disciplinary Authority simply concurred with the findings of the Enquiry officer and issued a show cause notice dated 4-5-94 proposing the punishment of dismissal from service of the Petitioner. The Petitioner received the same in June, 1994 and submitted his detailed reply dated 8-8-94 during the personal hearing held on that day. He had also pointed out that the complainant had also withdrawn her complaint by a letter dated 19-7-94 and that the disciplinary action against him may be dropped. Without considering the submissions made by the petitioner, and also without considering the withdrawal of the complaint, the Disciplinary Authority imposed the punishment order of dismissal by an order dated 21-10-94. The appeal preferred by the petitioner and the submissions made by him during the personal hearing before the Appellate Authority on 12-1-95 and 23-3-95 were not considered by the Appellate Authority. By his order dated 1-3-95 the Appellate Authority concurred with the order passed by the Disciplinary Authority and confirmed the punishment of dismissal. Thereafter, the Petitioner has raised this industrial dispute for conciliation before the Regional Labour Commissioner which ended in a failure. Then the matter has been referred to this Hon'ble Tribunal by the Government for adjudication. The domestic enquiry conducted against the Petitioner was not fair and proper and against the principles of natural justice. Hence, the order of dismissal passed against the Petitioner has to be set aside. The punishment of dismissal is shockingly disproportionate and totally is excessive. Therefore, this Hon'ble Tribunal may be pleased to interfere by invoking the powers under Section 11A of the I.D. Act and set aside the dismissal order. It is prayed that this Tribunal may be pleased to pass an Award holding that the dismissal of the Petitioner from service by the Respondent/Management as unjustified and direct the Respondent/Bank

to reinstate the Petitioner with continuity of service, back wages and other attendant benefits.

3. The Respondent/Syndicate Bank Management has filed a Counter Statement. The averments in the Counter Statement are briefly as follows :—

By the charge sheet dated 29-6-92, the Petitioner was directed to submit his explanation within 15 days of the receipt of charge sheet. In view of the party lodged a complaint, and the amount of Rs. 1000 deposited into the account on 2-12-91 was not credited in her account, the charge sheet was issued to the Petitioner charging with the misconduct of having acted in a manner prejudicial to the interest of the bank. By a letter dated 9-9-92 that a portion of the charge sheet was amended. The Petitioner did not submit any explanation. Therefore, it cannot be said that the Petitioner was not given an opportunity to submit his explanation to the charge sheet. The Enquiry Officer has set out in detail in his report the circumstances in which the examination of witnesses was done in the enquiry. The Petitioner was furnished with the deposition of each of the witnesses examined in respect of the charge and all the witnesses were subject to lengthy cross examination. No prejudice was caused to the Petitioner in the conduct of the enquiry. The Enquiry Officer considered in detail the evidence of every witness examined on either side for the conclusions reached by him. The real question was whether the remittance was duly accounted for in the books of account. Since the Petitioner claim that he returned the money he ought to have established that fact and also he should have given satisfactory explanation for the corrections he had made in the cashier's scroll. No satisfactory evidence was let in by the Petitioner about the alleged repayment of the amount to the agent of the account holder. Smt. Palaniammal or her agent were not examined by the Petitioner to establish the fact alleged by him. The findings of the Enquiry Officer based on adequate evidence and his conclusion was supported by cogent reasons. His findings are not based on assumptions presumptions surmises and conjectures. The Disciplinary Authority and the Appellate Authority applied their mind in the material on record and they were justified in concurring with the Enquiry Officer that the charges against the Petitioner were duly proved in the enquiry. The action of the Disciplinary Authority was not lacking in bonafide or it was discriminatory. Therefore, it is prayed that this Hon'ble Court may be pleased to pass an award rejecting the claim of the Petitioner.

4. When the matter was taken up for enquiry, no one has been examined as a witness on either side. The counsel for the Petitioner has made an endorsement as no documents of the Petitioner independent of a document covered in the domestic enquiry. On the side of the Respondent/Management 23 documents were marked by consent as Ex. M1 to M23. The learned counsel on either side have advanced their respective arguments.

5. The Point for my consideration is—

“Whether the action of the Management of Syndicate Bank by dismissing Shri G. Muhil Raj from the services is justified? If not, to what relief he is entitled to?”

Point :—

It is an admitted fact that the Petitioner worked as a Cashier in the Dindigul Main branch and that on 2-12-91 one Mr. Bala Venkatraman came to the bank to deposit a sum of Rs. 1000 in the S.B. Account No. 3766 of Smt. T. Palaniammal. It is the plea of the Petitioner himself in his Claim Statement that he received the cash and recorded the amount remitted and S.B. Account No. in the scroll at S No. 26. It is his further contention that when he was about to put the cash

received stamp on the challan, Mr. Bala Venkatraman informed him that Palaniammal has sent a person to get back the money brought for deposit and therefore, he requested the Petitioner to return back the money. So, he returned the money and the pass book. Hence he scored out the entry made in the scroll maintained by him. He would further contend because of that there was no entry in this regard in the scroll maintained by the Scroll Officer as well as in the subsidiary day book. The Respondent in the Counter para 2 has clearly mentioned the procedure to be adopted for remittance of cash to the saving bank account. That procedure is not disputed by the Petitioner.

6. The charge sheet dated 29-6-92 was issued to the Petitioner charging with the misconduct of having acted in the manner prejudicial to the interest of the bank. The xerox copy of the same is Ex. M1. By an order dated 9-9-92 an amendment to the charge sheet 29-6-92 was issued as a corrigendum. The xerox copy of the same is Ex. M2. By which the words 'and in the ledger folio' has been added in the original charge sheet. Though the Petitioner was required to submit his explanation within 15 days of receipt of the charge sheet, he has not submitted his reply. That is also not denied. In the domestic enquiry, conducted by the Enquiry Officer, the Management has examined C. T. Veerappan, Inspection Officer, N. Subramanian, Manager of the Dindigul Main Branch, T. Karunakaran, S.B. Account Clerk and K. Baladhandayutham, Special Assistant and in support of the charges nine documents were also marked. Ex. M4 is the xerox copy of the enquiry proceedings. Ex. M8 is the xerox copy of the Cashier's scroll maintained by the Petitioner for the transaction on 2-12-91. It is not disputed. From that document, it is seen under Sl. No. 26 the entries made earlier has been corrected with subsequent entries with some other account number and remittance amount. The Petitioner has stated in his claim statement itself as the money and the pass book were returned to customer's agent he scored out the entry made out in the scroll and he returned the counterfoil produced by the said party. For this stand taken by the Petitioner, he has not examined Smt. Palaniammal and the agent Mr. Bala Venkatram to whom he said to have returned the amount of Rs. 1,000, on 2-12-1991. On the other hand, it is seen from an entry made in the pass book of Smt. Palaniammal, that Rs. 1000 has been credited in her account on 2-12-91 and the balance has been struck out as Rs. 1,411. The xerox copy of that pass book is Ex. M14. The petitioner has been examined as DW3 in the domestic enquiry conducted for the charges levelled against him. He has deposed before the Enquiry Officer that on 2-12-91 when he was performing cashier duties an elderly man deposited a sum of Rs. 1000 under a credit challan into the account of Smt. Palaniammal and that he received the cash verified the same, noted scroll No. 26 and S.B. Account No. 3766 and Rs. 1000 in the column. He has also stated in his evidence that when the depositor insisting him to give back the money, he returned the money, pass book and the challan without cash received seal and therefore, he cut the entries made in the scroll. From these admissions of the petitioner in the domestic enquiry, it is seen that he only made these entries. As it is seen from Ex. M8 xerox copy of cash scroll for 2-12-91, corrections had been made in serial number 26 and some other S.B. account has been mentioned. All these manipulations by way of entries and cuttings made in the bank account by the Petitioner has not been disputed. Ex. M11 is the xerox copy of S.B. sub-day sheets for 2-12-91. The entry for the deposit of Rs. 1000 does not find a place here. Ex. M12 is the xerox copy of officers cash controlling sheet for 2-12-91. If we compare the entries in Ex. M8 the cash scroll maintained by the Petitioner on 2-12-91 with Ex. M12 officer's cash controlling sheet for 2-12-91, the entry for the deposit of Rs. 1000 in S.B. account of Smt. Palaniammal is not available in Ex. M12. On comparison of Ex. M8 with Ex. M12 it is seen all the entries found in Ex. M8 are found in Ex. M12, except Rs. 1000 because the challan for the same is not available and the entry has not been authenticated. In Ex. M8 what it is mentioned as item No. 25 is available under Ex. M12 under item No. 25. As stated earlier, the concerned man who said to have received back Rs. 1000 from the Petitioner on the same day has not been examined by the Petitioner before the Enquiry Officer as a defence witness to substantiate that stand. In Ex. M17 the xerox copy of the Enquiry Officer's report, the Enquiry Officer has clearly analysed the evidence on either side from paras 25 to 33 and had concluded from the available evidence that the reasons given by the charge sheeted employee are not acceptable and the alterations ad-

mittedly made by the petitioner in the accounts are totally unwarranted. As issue No. 4 in the enquiry report, the Enquiry Officer has analysed the query as to whether the charge sheeted employee produced adequate evidence to prove that he returned back Rs. 1000 to Sri Bala Venkatraman and on analysis of evidence, he has concluded that the charge sheeted employee, the petitioner herein, though let in some evidence about the return of the money to concerned person, from the other evidence available about the correction made by him in the bank books were without any authentication and from the evidence available on the side of the Management, and on the basis of the evidence given by the charge sheeted employee, he concludes that the alterations were made by the charge sheeted employee with motive and the reasons are after thoughts and those cuttings and alterations show that the charge sheeted employee misappropriated Rs. 1000 remitted by Sri Bala Venkatraman and in order to cover up his misdeal, he made so many alterations in the cash scroll without the knowledge of his superiors which amounts to tampering of bank records. Further there is an evidence, the concerned party who made the remittance when met the Manager subsequently, confirms about the remittance, it is seen that the charge sheeted employee should have destroyed or removed the credit slip, as it is observed by the Enquiry Officer in his report. So, under such circumstances, it cannot be said that the Enquiry Officer has given a perverse findings without any evidence. Further from the perusal of the entire proceedings of the enquiry, Ex. M4 it is seen that fair opportunity has been given to the charge sheeted employee to put forth his defence effectively and he has taken part all through the enquiry along with his defence representative and has let in his own evidence along others as defence witnesses, after detailed cross examination of management witnesses. From this it is seen that the contention of the Petitioner that the domestic enquiry conducted by the Respondent/Management is not fair and proper and in violation of principles of natural justice, is incorrect. From all these things, it is evident that the Disciplinary Authority and the Appellate Authority has concurred with the findings of the Enquiry Officer to come to the conclusion that the Petitioner has committed a serious and grave misconduct which is detrimental to the interest of the bank, which can be construed as an act done by the Petitioner prejudicial to the interest of the bank under clause 19 5(J) of Bipartite Settlement, as stated in the Chargesheet Ex. M1. Under such circumstances, it is held that the action of the Management of Syndicate Bank by dismissing Sri G. Muhil Raj from the services of the Respondent/Bank is justified and the concerned workman is not entitled for any relief. Thus, the point is answered accordingly.

7. In the result, an award is passed holding that the action of the II Party/Management in dismissing the I Party/Workman Sri G. Muhil Raj from service is justified. Hence, the concerned workman is not entitled to any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him and corrected and pronounced by me in the open Court on this day the 31st December, 2001.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None

DOCUMENTS MARKED :

For the I Party/Workman : Nil

For the II Party/Management :

Ex. No.	Date	Description
M1	26-06-92	Xerox copy of the charge sheet cum suspension order issued to Petitioner.
M2	09-09-92	Xerox copy of the corrigendum to charge sheet dated 26-6-92.
M3	12-10-92	Xerox copy of the notice of enquiry.
M4	16-12-92 23-02-93 24-02-93 03-05-93 04-05-93 05-05-93 15-06-93	
	16-06-93	Xerox copy of the enquiry proceedings pertaining to charge sheet dated 26-6-92.

17-06-93

18-06-93

20-07-93

21-07-93

22-08-93

M5 27-01-92 Xerox copy of the letter from Palaniammal to Manager Syndicate Bank, Dindigul.

M6 27-01-92 Xerox copy of the letter from M. Balavenkatraman to Respondent/Management.

M7 31-03-73 Xerox copy of the specimen signature card of Account holder.

M8 Nil Xerox copy of the cashier's scroll.

M9 1987 to 1991 Xerox copy of the S.B. ledger sheet of T. Palaniammal S.B. account of 3766.

M10 Nov. 91 Xerox copy of the S.B. sub-day sheet.

M11 02-12-91 Xerox copy of the S.B. sub General Ledger. 03-12-91

M12 02-12-91 Xerox copy of the officer's cash controlling sheet.

M13 02-12-91 Xerox copy of the routine cash sheet of Dindigul Main of II Party.

M14 02-12-91 Xerox copy of the S.B. Pass book of T. Palaniammal Account No. 3766.

M15 25-03-92 Xerox copy of the letter from Sri T. Karunakaran, Clerk of Dindigul branch to C. T. Veerappan, Manager Inspection regarding pass book entry in S.B. Deptt.

M16 16-12-92 Xerox copy of the letter from T. Palaniammal to of Dindigul branch regarding her inability to attend enquiry.

M17 31-01-94 Xerox copy of the enquiry report.

M18 04-05-94 Xerox copy of the 2nd show cause notice issued by Disciplinary Authority to Petitioner.

M19 08-08-94 Xerox copy of the explanation given by Petitioner to 2nd show cause notice.

M20 23-06-94 Xerox copy of the letter by II Party to I Party informing postponement of personal hearing at Petitioner's instance.

M21 08-08-94 Xerox copy of the minutes of personal hearing given to G. Muhif Raj.

M22 31-10-94 Xerox copy of the letter by II Party to Petitioner enclosing copy of proceedings dated 21-10-94 of Disciplinary Authority awarding punishment of dismissal from service.

M23 01-07-95 Xerox copy of the proceedings of Appellate Authority concurring with the decision of Disciplinary Authority.

नई दिल्ली, 14 फरवरी, 2002

का.आ. 867.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय एफ.सी.आई. के प्रवन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसूच्य में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-2-2002 को प्राप्त हुआ था।

[सं. एल.-22012/290/एफ/91-आई.आर. (सी.-II)]
एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 14 February, 2002

S.O. 867.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 13-02-2002.

[No. L-22012/290/F/91-IR(C-II)]

N.P. KESAVAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR.

Present Shri B.G. Saxena, Presiding Officer.

Reference No. : CGIT : 30/2001

Food Corporation of India

AND

Their Workmen

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by clause (d) of Sub section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/290/F/91-IR(C-II) dated ; 02-06-92 on the following schedule.

SCHEDULE

“Whether the action of the management of Food Corporation of India, Nagpur, in not allowing Special Allowance w.e.f. 01-10-86 to the labour asked to assist Dusting operators is justified ? If not, then what relief he is entitled ?”

This reference was sent to C.G.I.T Court at Jabalpur, Madhya Pradesh vide order No. L-22012/290/91-IR(C-II) dated ; 02-06-92 by Government of India, Ministry of Labour, New Delhi. This file was received by transfer in C.G.I.T. Nagpur from C.G.I.T. Court, Jabalpur on 10-08-2001.

The dispute was raised by the Secretary, Food Corporation of India Employees Association, Nagpur, Ajni, Nagpur.

The Statement of Claim was submitted on 5-10-94. The union has represented that the Food Corporation of India had employed labourers who were working in the Quality Control Section. On 1-07-82 award was passed by C.G.I.T. Court No.-II, Mumbai

in Reference No.C.G.I.T.-2/6/1980 in employers in relation to Food Corporation of India and their workmen. The Presiding Officer Shri M.A. Deshpande had passed the award that the casual labourers who were working in Quality Control Section and were assisting Dusting Operators will get .33 paise per day Special Allowance as the Dusting Operators were getting Rs.10/- per month by way of Special Allowance. The union further represented in Statement of Claim that this Special Allowance for Dusting Operators was enhanced to Rs.75/- per month w.e.f. 14-01-89. So the casual labours should also get Rs.2.50/- per day for the period they worked with Dusting Operators.

It is further represented that from 01-04-94 the Dusting Operators Special Allowance has been increased to Rs.125/- per month. The casual labourers who were assisting the Dusting Operators should also get Rs. 4.17/- per day for the period they worked with Dusting Operators.

In their Written Statement the Food Corporation of India stated that as per MOU dated : 14-01-89 between FCI management and National Coordination Committee, the Special Allowances is payable to the Dusting Operators and not to any other category of employees of Food Corporation of India, hence the labourers are not entitled to Special Allowances.

Both the parties have submitted documents. They did not produce any oral evidence in this case. Both the parties have also submitted their Written Arguments. Shri R.B. Sayyad represented the management. Shri Narendra Shukla represented the Workers' Union. They also argued the case orally.

I have considered the documents filed by the parties and the arguments advanced by them.

It is admitted to both the parties that C.G.I.T. Court No.-II of Mumbai had passed the award on 21-07-82. The Court had held as under :

"The demand of Special Allowance @ 33 paise per day when any casual labour works in any Quality Control Section is held to be justified but not the demand for medical facility. The Food Corporation shall pay the Special Allowance at this rate from the date of this award."

None of these parties challenged this award in any superior Court, hence this award became final.

In view of the above award the casual labourers are entitled to Special Allowance with the Dusting Operator.

None of the parties have submitted any record as to whether these casual labourers raised any dispute after 01-10-86 when Dusting Operator Allowance was enhanced from Rs. 10 per month to Rs. 75 per month. No record has been produced to show that

how many workers were employed to assist the Dusting Operators from the year 1982 to 1994. Whether any record of the attendance of these workmen was maintained properly from 1982 to 1994 or not ? In these circumstances the calculation of the amount payable to labourers upto the period of 1994 shall not be feasible. It has also not been brought on record that how many casual labourers have retired from the date of award i.e. 21-07-82 to 01-04-94.

In view of the above facts and circumstances, it will be justified and proper to allow the casual labourer to draw Special Allowance @ Rs. 4.17 per day from 01-04-94 for the duration they have worked in Quality Control Section and have been deputed to assist the Dusting Operators in performing their duties relating to fumigation and spraying etc. as mentioned in Circular Letter No. 12/99 dated : 28-07-99. The allowance shall be payable on the basis of the record of the attendance of the casual labour for the above work which is available with the management of Food Corporation of India.

To avoid future litigation in this matter, this Tribunal further directs that from 01-04-2002 the proper record of the attendance of the casual labourers who are deputed to assist in the work of Dusting Operators in the Quality Control Section shall be maintained. The Attendance Register showing the number of days for each casual labour who shall be deputed for the above job, shall be duly signed by the Officer in Charge of Quality Control Section. A copy of the attendance marked for each worker i.e. the extract of the attendance register duly certified by the Officer-in-Charge of the Quality Control Section, shall be provided to each casual labour so that he may ascertain that his attendance is marked properly.

ORDER

The Food Corporation of India is directed to allow Special Allowance to the casual labourers who have assisted Dusting Operators from 01-04-94 @ Rs. 4.17 per day for the period they have worked in the Quality Control Section with the Dusting Operators and have assisted them in performing the duties relating to fumigation, spraying etc. as mentioned in Circular No. 12 of 99 dated : 28-07-99.

The reference is answered accordingly.

B. G. SAXENA, Presiding Officer

Date : 14-01-2002

नई दिल्ली, 14 फरवरी, 2002

का.आ. 868.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनबन्ध में निदिष्ट औद्योगिक

विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण असनसोल के पंचाट (संदर्भ संख्या 50/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-02-2002 को प्राप्त हुआ था।

[सं. एल.-22012/210/98-आई आर. (सी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 14th February, 2002

S. O. 868.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 50/1999) of the Central Government Industrial Tribunal-cum-LC, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 13-02-2002.

[No. L-22012/210/98-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, ASANSOL.

Present : Shri Ramjee Pandey,
Presiding Officer.

REFERENCE NO. 50 OF 1999

Parties : General Manager (Operation),
Sonepur Bazari Project, E.C.L.
..Management

Vs.,

Shri Bhojan Singh, Dumper Operator
..Workman

Representation :

For the Management Shri P. K. Das, Advocate
For the Union (Workman) None.

Mines : Coal. State : West Bengal.

Dated the 28th January, 2002

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of section 10 of the Industrial Dispute Act, 1947, the Govt. of India through Ministry of Labour vide its Order No. L-22012/210/98/IR-(CM-II) dated 22-4-99 has referred the following dispute for adjudication by this Tribunal :—

“Whether the action of the Management of Sonepur Bazari Project of M/s. ECL in dismissing Sh. Bhojan Singh, Dumper Operator is legal and justified ? If not, to what relief workman is entitled ?”

After receipt of the reference from the Ministry summons were issued to both the parties directing them to appear in the Tribunal and file their respective written statements. Despite service of summons by Registered Post none appeared on behalf of the workman although several adjournments were given. Shri P. K. Das, Advocate, appeared on behalf of the management and filed photostat copies of letter dated 2-11-2000 of the General Manager of the management addressed to the workman and award passed by Arbitrator and submitted that the management has reinstated the workman in service and now the dispute does not exist. The fact that none appeared on behalf of the workman despite service of summons also indicates that the workman has got no interest in the dispute perhaps due to the fact that he has been reinstated.

In view of above facts it is clear that at present dispute between the parties does not exist and accordingly a ‘No Dispute Award’ is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 14 फरवरी, 2002

का.आ. 869.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.आई.एल. के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट (संदर्भ संख्या 21/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-02-2002 को प्राप्त हुआ था।

[सं. एल.-22012/205/96-आई आर. (सी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 14th February, 2002

S. O. 869.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/1997) of the Central Government Industrial Tribunal-cum-LC, Kolkata as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CIL and their workman, which was received by the Central Government on 13-02-2002.

[No. L-22012/205/96-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 21 of 1997

Parties : Employers in relation to the management of Coal India Limited, Calcutta

AND

Their Workman.

Present :

Mr. Justice Bharat Prasad Sharma
..Presiding Officer

Appearance :

On behalf of Management : Mr. A. K. Mukherjee,
General Secretary of the Union.On behalf of the Workman : Mr. S. Mukherjee,
Advocate.

State : West Bengal. Industry : Coal.

AWARD

By Order No. L-22012/205/96-IR (C-II) dated 05-06-1997 the Central Government in exercise of its power under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Coal India Ltd., Calcutta in terminating the services of Sh. Ananta Biswas Driver w.e.f. 7-6-95 is legal and justified ? If not, to what relief is the workman entitled ?”

2. The present reference arises out of the industrial dispute raised by the Rashtriya Coal Mazdoor Sangh on behalf of one Ananta Biswas who was engaged as a Driver by the Coal India Limited.

3. In the written statement filed on behalf of the union it is stated that the said Ananta Biswas was engaged as Driver by Coal India Ltd. in the year 1991 in June and by June, 1992 he had completed service of more than 240 days. Thereafter, in 1993 he also worked for more than 240 days and again in 1994 he worked also for more than 240 days. According to the union, in September, 1993 Shri Biswas had made a representation to the Regional Sales Manager, C.I.L. requesting to regularise his service as he had rendered valuable service with all sincerity and honesty. Thereafter, on 18-05-1994 also he further filed such a petition before the Regional Sales Manager of C.I.L. requesting him to regularise his service

as all these years he had rendered valuable service for more than 240 days in each calendar year. The Union, Rashtriya Coal Mazdoor Sangh also made a similar request to the management for regularisation of his service. According to the written statement of the union the workman was engaged against a permanent nature of job and against permanent vacancy and had worked for more than 240 days in all these preceding calendar years, but the management discontinued his service without even serving any notice to him and thus adopted unfair labour practice. It is also stated that the union had requested the management to deduct Provident Fund from the payment of salary to this workman, but it was not done and rather the service of the workman was terminated. It is also further stated that in course of discussion the management informed the union that the matter of Ananta Biswas was being routed through proper channel. It is stated that Shri Biswas had received salary all along from the cash counter of the management of C.I.L., but the management pleaded that he was a casual driver, though it was not a fact and he remained engaged since 1991 to 1995. Therefore, he should not be treated as casual and he deserves to be absorbed in service as permanent and his termination of service is illegal.

4. A written statement has been filed on behalf of the management of C. I. L. stating therein that the reference itself is not maintainable, because no dispute has been properly raised by the union with the Company to transform the dispute as an industrial dispute. It is also further stated that there did not exist any relationship of employer and employee between the C.I.L. and the said Ananta Biswas, because he was hired from the Automobile Association of Eastern India. It is stated that such engagement by the Company was neither made against any permanent vacancy, nor in terms of recruitment rules. Therefore, it is stated that the workman cannot claim regularisation of service, because his service was hired from the Automobile Association of Eastern India on temporary requirement. He was accordingly paid on calculation of his daily wages on monthly basis and when the requirement ceased, he was removed. It is stated that for such kind of removal of casual labour, there is no necessity of adhering to the provisions as laid down in the Industrial Disputes Act, 1947. It is also further stated that some of the Drivers engaged in similar manner as Shri Biswas namely, Dinesh Ch. Das, Nripendra Kumar Majumdar, Sanjit Satpati and Sukumar Guria had filed writ petition before the Hon'ble High

Court of Calcutta being C.O. No. 6397 (W) of 1995 praying for regularisation of their service in the Company and the said writ petition was dismissed by Hon'ble Justice S. B. Sinha by a judgement and order dated 6th June, 1995. It is further stated that the aforesaid person had also filed appeal against the judgement dated 6th June, 1995 before the Division Bench of the Hon'ble High Court and the Division Bench also dismissed the appeal by order dated 20th March, 1996. It is stated that the case of the present workman also belongs to the same category and though he was pressing for his regularisation of service, it could not have been done according to the rules. It is stated that the workman concerned was in the pannel of drivers maintained by the said Automobile Association of Eastern India and his services were lent to the company on requisition on casual basis. It is emphatically denied that the engagement of Shri Biswas was against any regular vacancy or according to any recruitment rules. Further, it has also been denied that the workman had worked for more than 240 days in the year 1991-1992 or even in 1993-1994 and he was engaged on casual basis on being hired from the said Automobile Association of Eastern India. It is stated that in case of urgent need, the Company used to send requisition to the said Association and the Association used to sponsor the name from the panel of drivers maintained by them. It is also stated that the Company used to retain them on temporary basis and therefore, his effort to get regularised was futile and it could not have been done. In this view of the matter, it has been stated on behalf of the management that neither the workman concerned was a regular workman, nor he was entitled to be regularised in service in permanent cadre against rules and when his services were not required, the same were dispensed with. Therefore, it is stated on behalf of the management that the workman is not entitled to any relief.

5. Both the parties led evidence, oral as well as documentary. So far as the documentary evidence is concerned, Ext. W-1 is the letter of the Chief Personnel Manager of the Coal India Ltd. written to the Regional Sales Manager, West Bengal Cell which is dated 5th June, 1995. It appears from this letter that when the matter of engagement of the workman, Ananta Biswas was put up before the authorities, it was observed that deployment of Shri Biswas as Casual Driver was irregular and therefore, it should be discontinued immediately. From this letter it also appears that the authorities of the CIL felt that the person who was responsible for engage-

ment of this nature committed serious kind of mistake in doing so and the name of such officer was called for and it was further directed that no such engagement should be made in future without specific written approval of the competent authority of the CIL. Ext. W-2 series are the xerox copies of the cheque through which payments were made to the workman concerned from time to time. Ext. W-3 is the letter written by the Regional Sales Manager of CIL to the Additional Chief Personnel Manager in response to his letter dated 02-05-1995 seeking certain informations and in this letter it was stated that the engagement of Ananta Biswas was on hire basis from A.A.E.I. to drive a car with effect from 05-06-1991. It was also further stated in this letter that actually two drivers were provided to the office, but during that period only one driver was available and as the services of one Damodar Das was being utilised by marketing Head Quarters, the services of Shri Ananta Biswas were being utilised in the office. It is also revealed from this letter that the details of employment of Ananta Biswas from June, 1991 to March, 1995 were provided and from this detail it appears that in 1991 he had worked for 35 days in three months. In 1992 he had worked for 164 days in 1993 he worked for 345 days. Thereafter he had worked for a number of days in the year 1994 and 1995 also and in total he had worked for 952 days. Ext. W-5 is the letter addressed to the Regional Sales Manager by the workman concerned for making ex-gratia payment at par with the Drivers on regular basis as he was being paid salaries on daily-rate basis. So, from this letter it becomes clear that the workman had admitted that he was being paid on daily-rated basis against which he had grievance. Ext. W-6 is the letter addressed by the workman concerned to the Regional Sales Manager, West Bengal Cell requesting for his regularisation because he was working for pretty long time and he had stressed that he had worked for 373 days in all from August, 1992 to the date of writing this letter i.e., 14-09-1993. Ext. W-6 a is also the letter written by this workman to the Regional Sales Manager, West Bengal Cell making a request on 18-05-1994 that he should be regularised in service as a Driver and he had also attached his bio-data and the details of his working days in the Company. Ext. W-7 is a letter issued by the Regional Sales Manager to one garrage sending the departmental car for repair with the said Driver, Ananta Biswas. It is only in order to show that he was serving as a Driver, which has not been denied. Ext W-8 is the letter sent by the General Secretary of the Rashtriya Coal

Mazdoor Sangh to the Chief General Manager requesting for regularisation of the 7 casual employees, including the concerned workman.

6. So far as the management is concerned, four documents have been marked in evidence. Ext. M-1 is the letter sent to the Coal India Ltd. by the Automobile Association of Eastern India by which services of Ananta Biswas were placed at the disposal of CIL and the details of the conditions of service and terms have been given in it. It speaks of payment to the said Driver on the basis of the quantum of work. Ext. M-2 is the letter sent by the Regional Sales Manager, CIL to the Secretary of the A.A.E.I. asking him to furnish the details of the said Ananta Biswas, Driver whose services were hired through the Association. Ext. M-3 is the letter sent by the Assistant Secretary of the A.A.E.I. in response to the aforesaid letter in which it was stated that the service of the said Ananta Biswas was hired by the Company on being provided by this Association from the list of casual Drivers on requisition. Ext. M-4 is the copy of the writ petition along with the order dated 06-06-1995 passed by the Hon'ble High Court of Calcutta.

7. So far as the oral evidence is concerned, altogether three witnesses have been examined on behalf of the union and one has been examined on behalf of the management. WW-1, Shri Ananta Biswas is the workman concerned. He has stated that he worked with the C. I. L., Calcutta from 05-06-1991 till 07-06-1995 without break of service. He also stated that his salary was being paid all along by cheques by the C. I. L. and according to him his service was terminated on 07-06-1995 by the Regional Sales Manager. He also stated that he had earlier applied for his regularisation, but he did not received any response. He also stated that he had worked in all for 952 days. In his cross-examination, he admits that he was sets to the C. I. L. by the Automobile Association of Eastern India for doing service and he had not applied for any job with the C. I. L. He also admitted that his name was not sponsored by the Employment Exchange for appointment as a Driver and he was also not given any appointment letter by the C. I. L. He has stated that in similar manner in 1992 also his name was forwarded on requisition of the C.I.L. and similarly in 1993 also A.A.E.I. recommended his name to the management. He has denied that his salary was not paid on monthly basis, but as pointed out earlier, it becomes clear from his own letter, Ext. W-5 that he was being paid on daily-rate basis. However, he has also admitted that his

daily-rate of salary used to be fixed by A.A.E.I., though he used to receive salary on monthly basis on being calculated on daily basis. He has also admitted in his cross-examination that he had not worked continuously from 05-06-91 to 07-06-95, though he worked regularly from 1992 to 1995 and prior to it he was without work.

WW-2, Sambhu Nath Ghosh is also an employee of the C.I.L. who is working there since 1982 and he happens to be a member of the sponsoring union. According to him from 1992 to 1995 he was working as an Administration Clerk. He has given the manner of preparation of bill of the driver on the checks being prepared on the basis of the Log Book concerned. He has stated that on the recommendation of the Controlling Officer that since the Driver had completed 240 days of service, he should be regularised, the matter was referred to the Head Quarters of C.I.L., but the Head Quarters recommended termination of his service.

WW-3, Pijush Dasgupta who happens to be an Assistant Secretary of the sponsoring union has stated that Ananta Biswas was working as a Driver in the C. I. L. and he had worked continuously as a Driver from 1992 to 1995 under the management, and therefore, he had directed workman to apply for regularisation and the union was informed by the management that they were forwarding the matter to the Head Quarters with the recommendation. He also further stated that when they came to know about the termination of the service of the workman, they raised industrial dispute. In his cross-examination, he has stated that so far as negotiation is concerned, there is no paper available.

8. MW-1, Amit Roy is the Deputy Sales Manager, Administration of C.I.L. at Regional Sales Office, West Bengal. According to him, Ananta Biswas was not an employee of C.I.L. According to him the management happens to be a member of the A.A.E.I. and the management requisition service of a Driver from A.A.E.I. and on the requisition of the management the Driver was hired. According to him one of the functions of the A.A.E.I. is to supply Driver to the member organisations. He has also stated that the Company has a separate procedure of appointment of Class-IV employees, including Driver. According to him there were breaks in the service of the workman during the period of his engagement and he also stated that there was no vacancy in the post of Driver in the office of the management. He also stated that other Drivers, namely, Dinesh Das, Nripendra Kumar Mazumdar, Sanjib Satpati and Sukumar Guria had also prayed for regularisation, but it

was not done. So, he has stated that the workman concerned is not also entitled to any relief. In his cross-examination, he has stated that the concerned worker was a Driver hired from some agency and in the paper the period of his engagement was never specified. He has stated that he was being paid on monthly basis on calculation at daily rate and the rate was fixed by the A.A.E.I. This fact is admitted by the union also. According to this witness the workman concerned was driving office car during his engagement and subsequent to his disengagement, some permanent Drivers were transferred from subsidiary office. So, from his evidence it appears that the post of a Driver on permanent basis did not exist after his disengagement.

9. From the evidence as discussed above, it becomes clear that the workman in question was never appointed by the C.I.L. in regular manner according to the rules and he was not also engaged or employed on permanent basis. It appears that because of the exigency, service of a Driver was requisitioned from A.A.E.I. and said Association forwarded the name of this workman to C.I.L. and he was accordingly engaged on casual basis and the payments were being made to him according to the rates fixed by the said agency, A.A.E.I. Of course, his payments were being made on monthly basis through cheques, which have been filed. But, it becomes clear that his engagement was on casual basis and he was working from time to time according to the necessity and requirement of the company and he was being paid for the days for which he had worked. So, such an appointment cannot be termed as a regular appointment and the question of treating such an employee as regular employee does not arise. It has been held by the different High Courts from time to time and also by the Hon'ble Supreme Court in different cases that regularisation of a person engaged on casual basis cannot be permitted and if some rule exists, the order for regularisation of a casual amounts to creating a new mode of appointment, which cannot be done. It becomes clear from the evidence that no doubt the workman concerned was working under C.I.L. for a considerable period, but his appointment was not only on casual basis on being hired from an agency, rather it was irregular also, and therefore, it is evident that the higher authorities of C.I.L. viewed this kind of engagement seriously as disclosed from Ext. W-1 and they not only ordered discontinuance of this workman from service, rather they directed the subordinate officers not to make any such engagement in future without specific written approval of the competent authority of C. I. L.

10. It is clear that neither the engagement of this workman was regular, nor it was against any permanent vacancy and it was totally irregular engagement, and therefore, when in the opinion of the authorities of C.I.L. the necessity and justification of his continued engagement had ceased or ended, his service was discontinued. In such a circumstance, it was not at all necessary to follow the procedure laid down under Section 25 F of the Industrial Disputes Act, 1947 in his case. The workman, therefore, is not entitled to any relief whatsoever and the reference is disposed of accordingly.

Dated , Kolkata,

The 5th February, 2002.

B. P. SHARMA, Presiding Officer

नई दिल्ली, 14 फरवरी, 2002

का.आ. 870:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/2/2002 को प्राप्त हुआ था।

[सं. एल.-22012/49/97-आई.आर. (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 14th February, 2002

S.O.870.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 13-02-2002.

[No. L-22012/49/97-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR
PRESENT SHRI B. G. SAXENA, PRESIDING
OFFICER.

REFERENCE NO. CGIT : 94/2000

SUB AREA MANAGER, WCL

AND

84 WORKMEN ALONGWITH SH. LALAN
PRASAD

AWARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/49/97/IR(CM-II) dated : 09-06-98 on the following schedule.

SCHEDULE

“Whether the action of the Sub-Area Manager, M/s. Western Coalfields Ltd. Padmapur Open Cast Mine, Distt. Chandrapur in not giving promotion to 84 workmen alongwith Sh. Lalan Prasad vide order No. WCL/SAM/POSA/PER/4754 dated : 23-10-93 is valid, legal and proper? If not, what relief the workmen are entitled to?”

The Statement of Claim in this case was filed at C.G.I.T. Court No.-II at Mumbai by S. S. Sokli, workmen representative for Bharatiya Koyla Khadan Mazdoor Sangh on 18-08-98. It is mentioned that vide order dated : 23-10-93 promotion was not given to 84 workmen alongwith Lalan Prasad. Lalan Prasad was favoured by the management without reasonable classification. The 84 workmen are entitled to promotion w.e.f. 01-07-93.

The management of WCL contested the case on the ground that there are two separate categories for workers in underground mining and Excavation work. Lalan Prasad was a departmental candidate in the Operation Stream whereas all other claimants were new entrants and were appointed as trainee. They have different categories and different promotional channel.

Out of these 84 workmen, 35 are Operators and the other workmen are working in different disciplines, Such as : Maintenance Staff of Excavation categories and Drivers, Electricians, Mechanics, Fitters, Sub-Station Attendants, Pump Khalasis, Conveyer Operators etc. of mining categories. They are not Operation Staff. They can not be compared with Lalan Prasad for the benefit of promotion.

Lalan Prasad was a Category-I Mazdoor and was authorised to work as Dumper Operator w.e.f. 12-07-90 due to having Heavy Vehicles Driving License. The management after one year place him in Category-V and again after one year i.e. 12-7-92 he was entitled to get Excavation Grade-D. He was also entitled to Grade-C from 12-07-93. When the Promotion Order of Lalan Prasad was issued alongwith others 84 workmen on 23-10-93, he was promoted from Category-V to Grade-C. He and his union represented his case. The management corrected the mistake and issued order restoring him as Dumper Operator, Grade-C w.e.f. 01-07-93.

The case of Lalan Prasad is totally different as he belongs to different category of service. The other workmen are not entitled to any promotion vide office order dated : 23-10-93.

On behalf of the workmen the statement of D.M. Satpute was recorded. From the side of the management K.L. Achariya, Personal Manager was examined. The parties also filed documents.

I have considered the entire oral and documentary evidence on record.

The order dated : 23-10-93 shows that 84 employees of different categories were promoted to next higher pay scales. They were allowed to remain on probation for six months.

There is another order dated : 25-04-93 showing that Lalan Prasad was given promotion to Excavation Category-C w.e.f. 01-07-93 on the basis of agreement between the union and the management. The matter of Lalan Prasad was discussed with the representatives of the union by the management. The union has not challenged in this reference the order dated : 25-04-94.

In his statement on 11-10-2000 and further cross-examination on 04-07-01 Shri D. M. Satpute, the union representative admitted that the order dated : 23-10-93 shows the promotion of 84 workmen who belong to different categories and had different pay scales. He further represented that he is representing only No. 1 to 29 workmen mentioned in list dated : 23-10-93. He is not contesting the case of workmen shown from Serial No. 30 to 84 of list dated : 23-10-93. He further represented that he does not know how many persons from Serial No. 1 to 29 are the members of his union? He later submitted the list of only 14 persons who had authorised him to contest the case. It is therefore clear that he did not represent the 70 other workers of list dated : 23-10-93.

In his statement he admitted that Lalan Prasad was given promotion to Category-C in the Category of Dumper Operators w.e.f. 01-07-93. He did not explain anywhere how the other workmen were entitled for any further promotion from 01-07-93 along with Lalan Prasad. Thus the statement of D.M. Satpute does not clarify anywhere that these 84 workmen were also entitled for any further promotion.

The management in their Written Arguments has admitted that Lalan Prasad was entitled to promotion from Category-V on 01-07-91. Due to oversight he was placed at Category-V w.e.f. 24-04-92. Further he should have been placed in Category-D w.e.f. 01-07-92. Again by mistake he was placed in Category-D w.e.f. 23-10-93. When the mistake was pointed out by the union to the management

his case was reconsidered and he was placed in Category-C w.e.f. 01-07-93. The case of other 84 workmen was not similar. The other operators were new entrants in service and they were granted promotion according to the rules. In view of the above facts there is no illegality in the order of the management.

ORDER

The action of the Sub Area Manager, Western Coalfields Ltd., Padmapur Opencast Mine, Distt. Chandrapur in not giving promotion to 84 workmen alongwith Shri Lalan Prasad vide order No WCL. SAM/POSA/PER/4754 dated : 23-10-93 is valid, legal and proper. The aforesaid 84 workmen are not entitled to any other relief.

The reference is disposed of accordingly.

B. G. SAXENA, Presiding Officer

Dated : 23-1-2002

नई दिल्ली, 14 फरवरी, 2002

का.आ. 871.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नागपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/2/2002 को प्राप्त हुआ था।

[सं. एल.-22012/496/95-आई.आर. (सी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 14th February, 2002

S.O. 871.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal/Labour Court Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 13-02-2002.

[No. L-22012/496/95-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR
PRESENT SHRI B.G. SAXENA, PRESIDING
OFFICER.

REFERENCE NO. CGIT : 162/2000

THE SUPTD. (M) MANAGER, WCL

AND

SHRI SRIRAM DEORAJ

WARD

The Central Government, Ministry of Labour, New Delhi, by exercising the powers conferred by Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 has referred this dispute for adjudication vide order No. L-22012/496/95-IR(C-II) dated : 04-09-96 on the following schedule.

THE SCHEDULE

"Whether the action of the management of Suptd. of Mines Manager, Ballarpur Colliery 3 & 4 Pits of WCL, PO : Ballarpur, Distt. Chandrapur vide letter No. WCL/BA/BC/22/1096 dated : 06-08-95 in dismissing the services of Shri Sriram Deoraj, Ex-M.T.C.M. is justified?" If not, what relief the workman is entitled to?

This reference was sent to C.G.I.T. Court No.-I at Mumbai on 04-09-96 by Ministry of Labour, New Delhi. The file was received in this Court by transfer on 03-06-2000. On 13-09-2000 the workman Shri Sriram Deoraj appeared in the Court and, represented that no advocate is conducting the case. Representative of his union also did not appear to contest the case for the workman.

On 26-06-2001 the son of the claimant Shri Shiv Kumar submitted Death Certificate of workman Sriram. On 07-09-2001 application was moved to bring the legal representatives of the workman on record.

Both the parties were directed to produce documentary evidence and affidavits in support of their case. The case was adjourned to 23-10-2001. Again the case was adjourned to 06-12-2001 for producing evidence in support of the claim by the legal representatives of the workman. The counsel for management also moved application that the legal heirs are not entitled to any relief after the death of the workman. No evidence has been produced in this Tribunal in rebuttal of the charges framed against the deceased workman by his legal representative.

Today the case was taken up. The counsel for the management represented that the workman Shri Sriram Deoraj had assaulted Shri E.M.S. Chandra, Supdt. Engineer (E & M) on 07-04-94 at 8.45 a.m. in his office for which he was chargesheeted. The Chargesheet was submitted on 07-04-94. After holding enquiry against the workman, he was dismissed from service. The documents regarding the enquiry proceedings have been filed in this Court. The order dated : 29-05-95 shows that the charges framed against Sriram Deoraj were proved. Shri Sriram Deoraj had threatened, abused and assaulted Shri E.M.S. Chandra, Supdt. Engineer (E & M) on the alleged date, time and place. He was dismissed from service due to his misconduct.

The legal representatives of the workman or their counsel did not turn up in the Court today. No oral evidence or affidavit has been filed from the side of the legal representatives of the workman show that workman Shri Sriram Deoraj was falsely implicated in this case. There is nothing on record to show that enquiry was not conducted fairly or impartially. In view of the above facts and circumstances the workman Sriram Deoraj was rightly dismissed from service for his alleged misconduct.

From the above documents on record the order of the Supdt. of Mine vide letter No. WCL/BA/BC/22/1096 dated : 6-8-95 in dismissing Shri Sriram Dcoraj, Ex. M.T.C.M. was justified.

ORDER

The action of the management of Supdt. Mine Manager, Ballarpur Colliery 3 & 4 Pits of WCL, Ballarpur, Distt. Chandrapur vide letter dated : WCL/BA/BC/22/1096 dated : 06-08-95 in dismissing the services of Shri Sriram Deoraj, Ex-M.T.C.M. is justified.

The legal representatives of the workman are not entitled to any relief.

The reference is answered accordingly.

B. G. SAXENA, Presiding Officer

Dated : 21-1-2002

नई दिल्ली, 15 फरवरी, 2002

का.आ. 872.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुवन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण से. 2, धनबाद के पंचाट (संदर्भ संख्या 47/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-2-2002 को प्राप्त हुआ था।

[सं. एल.-20012/486/95-आई.आर. (सी. I)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 872.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 47/1997) of the Central Government Industrial Tribunal 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 14-2-2002.

[No. L-20012/486/95-IR(C-I)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT

Shri B. Biswas. Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO :—47 of 1997

Parties : Employers in relation to the management of M/s. BCCL's Lodna Area and their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : Shri D. K. Verma,
Advocate

State : Jharkhand

Industry : Coke Plant

Dated, Dhanbad, the 31st January, 2002.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/486/95-IR(Coal-I), dated, the 8th April, 1997.

SCHEDULE

“Whether the action of the management of Lodna Coke Plant under Lodna Area No. X of M/s. BCCL in not assessing the age of Sh. Sheopujan Thakur by Apex Medical Board is justified? If not, to what relief is the workman entitled?”

2. Rule 10B of the Industrial Disputes (Central) Rules, 1997 speaks as follows :—

“While referring an industrial dispute for adjudication to a Labour Court, Tribunal or National Tribunal, the Central Govt. shall direct the party raising the dispute to file a statement of claim complete with relevant documents, list of reliance and witnesses with the Labour Court, Tribunal or National Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.”

Therefore, the provision of law speaks clearly that the concerned workman is liable to submit his W.S. within 15 days from the date of receipt of

reference in question. It is seen that the instant reference was referred to this Tribunal on 8-4-97. Record shows clearly that thereafter several notices including notices under Regd. Post with A/D were sent to the concerned workman for causing his appearance before this Tribunal. But the concerned workman did not consider necessary to take any step on his behalf in the matter of disposing of the reference in question. On the contrary it is seen that after consuming abnormal period the management filed their W.S. which has been kept with the record. The reference was made in view of the industrial dispute raised by the concerned workman. Naturally as per Rule 10B of the Industrial Disputes (Central) Rules, 1957 submission of W.S. by the concerned workman is mandatory. Until and unless any such W.S. is submitted on behalf of the concerned workman there is no scope to proceed with the hearing of the instant reference though it is seen that the management has filed W.S. on their behalf. The attitude of the concerned workman if is taken into consideration will speak clearly that it was a luxury on his part to make reference by raising industrial dispute. He inspite of raising the industrial dispute did not consider necessary to pursue the matter through his union. On the contrary by virtue of his act the Tribunal had to waste valuable time and also had to incur expenses from the Govt. exchequer in the matter of issuance of notice to him. However, as the concerned workman inspite of giving ample opportunity has failed to take any step for submitting W.S. It should be presumed that he is not interested to proceed with the hearing of the instant case any further. Under such circumstances a 'No dispute' Award is rendered presumed non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.अ. 873:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार को सी.सी.एल. के प्रवर्तन के संबंध निधियों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट (संदर्भ संख्या 61/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-02-2002 को प्राप्त हुआ था।

[सं. एल.-20012/388/98-आई.आर. (सी.-I)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 15th. February, 2002

S.O. 873.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 61/1999), of the Central Government Industrial Tribunal I, Dhanbad now as shown in the Annexure in

the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 14-2-2002

[No. L-20012/388/98/IR(C-I)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD
In the matter of a reference under Sec. 10(1)(i)(2A)
of the Industrial Disputes Act, 1947.

Reference No. 61 of 1999.

Parties : Employers in relation to the management of
Sudamdih Area of M/s. BCCL.

AND

Their Workmen

Present : Shri S.H. Kazmi,

Presiding Officer

Appearances :

For the Employers : Shri H. Nath, Advocate.

For the Workmen : None.

State : Jharkhand. Industry : Coal.

Dated, the 4th February, 2002.

AWARD

By Order No. L-20012/388/98-I.R.(C-I) dated 17-4-99 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of the union from the management of Sudamdih Shaft Mine of M/s. BCCL to get the age of Sri Sukar Malhotra assessed by the Medical Board is justified? If so, to what relief the workman is entitled?"

2. From the record of this reference it appears that despite notices being sent repeatedly to the sponsoring union for filing written statement none appeared on behalf of the workman. It is thus obvious that neither the workman nor the sponsoring union is interested in pursuing the matter any further.

3. In such circumstance, I render a 'No Dispute' Award in the present reference case.

S: H. KAZMI, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ. 874.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण 2, धनबाद के पंचाट (संदर्भ संख्या 39/1988) को प्रकाशन करती है, जो केन्द्रीय सरकार को 14-02-02 को प्राप्त हुआ था।

[सं. एल.-20012/182/87-डी-III/आई.आर. (सी.-I)]
एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 874.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/1988) of the Central Government Industrial Tribunal 2, Dhanbad now as shown the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 14-02-02.

[No. L-20012/182/87-DIII A/IR(C-I)]
N. P. KESAVAN, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD
PRESENT

Shri B. Biswas,
Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 39 OF 1988

PARTIES :

Employers in relation to the management of Sudamdih Shaft Mine of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman : None

On behalf of the employers : Shri B. Joshi,
Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 31st January, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under

Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(182)/87 D-III dated the 10th February, 1988.

SCHEDULE

“Whether the action of the management of Sudamdih Incline Mine of Sudamdih Area of M/s. Bharat Coking Coal Limited, Dhanbad in dismissing Shri Shyamdeo Bhuiyan from service of the company is justified. If not, to what relief is the workman entitled?”

2. Soon after the receipt of the order of reference notices were duly served upon the parties. Both the parties at first appeared before this Tribunal and filed their respective W.S. documents. But subsequently, the workmanside abstained from appearing before this Tribunal and taking any steps further inspite of sending Regd. notices to them repeatedly. The instant reference is pending since long. Ample opportunity has already been given to both sides. But the management though remained present although the workman side did not consider necessary to appear before this Tribunal for taking further steps in the matter of hearing of the instant reference. As such there is a reason to believe that the concerned workman is not interested to proceed with the case. Under the circumstances, a ‘No dispute’ Award is rendered and the reference is disposed of on the basis of ‘No dispute’ Award presuming non-existence of any industrial dispute between the parties presently.

B. BISWAS, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ. 875.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट (संदर्भ संख्या 127/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-02-02 को प्राप्त हुआ था।

[सं. एल.-20012/148/96-आई.आर. (सी.-I)]
एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 875.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 127/1997) of the Central Government Industrial Tribunal-I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their

workman, which was received by the Central Government on 14-2-2002.

[No. L-20012/148/96-IR (C-I)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1,

DHANBAD

In the matter of a reference under Sec. 10(1)(d) (2A) of Industrial Disputes Act, 1947.

REFERENCE NO. 127 OF 1997.

Parties ;

Employers in relation to the management of
P. B. Area of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT :

Shri S. H. Kazmi,
Presiding Officer.

Appearances ;

For the Employers : Shri H. Nath, Advocate

For the Workmen : None.

State : Jharkhand Industry : Coal

Dated, the 4th February, 2002

AWARD

By Order No. L-20012/148/96-IR (C-I) dated 26-6-97 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of I.D. Act, 1947, referred the following dispute for adjudication to this Tribunal ;

“Whether the action of the management of Balihari Colliery of M/s. PCCL in dismissing the services of Smt. Kunti Devi, wife of late Karu Mahato after her appointment in terms of NCWA-II provisions is legal and justified? If not, to what relief is the concerned workman entitled?”

2. This reference case was received in this Tribunal on 11-7-1997 and since then none is appearing on behalf of the workman to take any step, despite notices being sent to the workman repeatedly for filing written statement. It is, thus, obvious that the workman does not want to pursue the matter any further.

3. In such circumstances, I render a ‘No Dispute’ Award in this reference case.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 15 फरवरी, 2002

का.आ. 876.—अर्थोपेक्षित विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार बा.सी.सी.एल. के प्रबंधन के संबंधितियों के और उनके कर्मचारों के बीच, अनुबंध में, निर्दिष्ट अर्थोपेक्षित विवाद में केन्द्रीय सरकार अर्थोपेक्षित अधिकरण 2, धनबाद के पंचाट को (संदर्भ संख्या 14/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-2-2002 को प्राप्त हुआ था।

[सं. एल-20012/59/93-आई.आर. (सी-I)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 15th February, 2002

S.O. 876 —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No 14/1994) of the Central Government Industrial Tribunal-2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 14-2-2002.

[No. L-20012/59/93-IR (C-I)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Biswas,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 14 OF 1994

PARTIES :

Employers in relation to the management of Bastacolla Area No. 9 of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman : Shri K. Chakravorty
Advocate.

On behalf of the employers : None.

State : Jharkhand Industry : Coal,

Dated, Dhanbad, the 31st January, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/59/93-I.R. (Coal-I), dated the 20th December, 1993.

SCHEDULE

“Whether the demand of the union for regularisation of Shri Kesto Mondal as Sweeper in Cat. I with retrospective effect under the management of M/s B.C.C.L., Bastacolla Area No. IX, P.O. Jharia Distt. Dhanbad is justified? If so, to what relief the workman is entitled?”

2. The case of the concerned workman according to the W.S. in brief is as follows :

The concerned workman in his W.S. submitted that he had been working as Sweeper which was permanent and prohibited nature of job at Bastacolla Area since long under the direct control and supervision of the management. He alleged that though the management implemented the Wage Board Recommendation and NCWA has refused to give pay benefit to him according to the said recommendation. Accordingly he through the union raised an industrial dispute demanding regularisation of his service according to the Wage Board recommendation and NCWA before the ALC(C) Dhanbad which ultimately resulted reference to this Tribunal. The concerned workman accordingly has prayed for an Award directing the management to regularise him in the service and also to pay him Cat. I wages with retrospective effect and also with all back wages.

3 The management on the contrary after filing WS cum-rajoinder have denied all the claims and allegation which the concerned workman asserted in his W.S. The management submitted that there was no relationship of employer and employee existed in between the management and the concerned workman at any point of time. The management submitted that they had sufficient number of Sweepers on their roll to carry on job at Bastacolla and for which there was no requirement for engaging the concerned person as Sweeper in Cat. I. They submitted that during the end of 1991 it was felt that the Sweeping and cleaning job of the area office building should be done before the usual opening hours of the Area office for smooth running of the Administration and accordingly they wanted to deploy three Sweepers at a time for a period before the commencement of work in the Area Office through contractor. Accordingly the management invited sealed tenders from the local

Sweepers. Jamadars to undertake the contract job of Sweeping and cleaning the Area office by engaging three Sweepers so that before the commencement of work the work could be over. Three persons namely, S/Shri Arun Hari, Bablu Hari and Kesto Hari submitted their quotations and the matter was decided and Shri Arun Hari was issued the work order for a period of three months from 1-1-92 to 31-1-92 and according to the schedule Shri Arun Hari engaged three persons including himself on part-time basis and used to complete the job within a period of 1 to 2 hours before the commencement of work in the Area Office. The persons who were engaged by the contractor to carry on part-time Sweeping work were paid wages according to the contractual rate. Subsequently as irregularity was detected, the said contract was terminated and thereafter the management did not engage any contractor on part-time basis. The management submitted that the concerned person was not directly engaged by the management. If he at all worked with Shri Arun Hari on his contract job for a period of three months he cannot claim for regularisation under the management. He even has not received any wages from the company for working as part-time sweeper. Accordingly the management submitted that the claim of the concerned workman finds no basis and for which he is not entitled to get any relief which he has prayed for.

4. The points for decision in this reference are :

“Whether the demand of the union for regularisation of Shri Kesto Mondal as Sweeper in Cat. I with retrospective effect under the management of M/s. BCCL Bastacolla Area No. IX, P.O. Jharia, Distt. Dhanbad is justified? If so to what relief the workman is entitled?”

Decision with reasons

5. It is the specific claim of the concerned workman that he worked as Sweeper at Bastacolla Area for a long period directly under the control and supervision of the management. His specific allegation was that though he worked as Sweeper continuously for a long period under the management, the management did not consider necessary to regularise his service in Cat. I Sweeper. Even they refused to pay wages according to the Wage Board recommendation and NCWAs. On the contrary the management categorically denied the fact asserted by the concerned workman. The management submitted that the concerned workman never worked under the management on any occasion excepting on one occasion when three part-time sweepers were appointed for cleaning Area Office Building before

usual opening hours for the interest of administration and the said period was from 1-1-92 to 31-3-92. Thereafter as a dispute was raised they never engaged any such part-time Sweeper to carry on work at their area. The management further submitted that they never paid wages to the concerned workman directly from their office. In view of the submission made by the management the onus absolutely rested on the concerned workman to show that he worked under the management as Sweeper continuously for a long period and inspite of his working there for a such a long period the management refused to regularise his service as Cat. I Sweeper and refused to pay wages according to the Wage Board Recommendation and NCWA. It is seen from the record that inspite of giving several opportunities the concerned workman did not consider necessary to appear before the Tribunal in connection with the instant reference case. He even did not consider necessary to submit his rejoinder in view of the W.S.-cum-rejoinder filed by the management. The attitude of the concerned workman if is taken into consideration it will expose clearly that he was not at all interested to proceed with his own case. Just relying on the facts disclosed in the pleadings there is no scope to uphold the contention of the concerned workman because of the fact that facts disclosed in the W.S. cannot be considered as substantial piece of evidence. The concerned workman has got ample opportunity to adduce evidence in support of his claim but he did not consider necessary to avail the same. Accordingly after careful consideration of all the facts and circumstances I hold that the concerned workman has failed to substantiate his claim lamentably and for which he is not entitled to get relief as he prayed for. In the result, the following Award is rendered :

"The demand of the Union for regularisation of Shri Kesto Mondal as Sweeper in Cat. I with retrospective effect under the management of M/s. BCCL, Bastacolla Area No. IX. P.O. Jharia, Distt. Dhanbad is not justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 18 फरवरी, 2002

का.आ. 877.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार ई.सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण प्राप्त क्षेत्र के पंचाट (संदर्भ संख्या 33/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[सं. एल-22012/325/98-आई.आर. (सी-II)]
एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 18th February, 2002

S O. 877.— In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/1999) of the Central Government Industrial Tribunal-cum-LC, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 15-02-2002.

[No. L-22012/325/98-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present :

Shri Ramjee Pandey

Presiding Officer

Reference No. 33 of 1999

Parties :

Dalurband Colliery of M/s. E.C. Ltd.

—Employer

Vs.

Shri Gandu Pradhan

—Workman

Appearances :

For the Employer

Shri P. K. Das,
Advocate

For the Workman Union

Shri S. K. Pandey,
Chief General Secretary,
Koyala Mazdoor
Congress

Industry : Coal

State : West Bengal

Dated the 11th January, 2002

AWARD

In exercise of powers conferred by the clause D of sub-section 1 and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947, Govt. of India through the Ministry of Labour has referred the following disputes for adjudication :

"Whether the action of the management of Dalurband of Colliery, Pandaveshwar Area of M/s. Eastern Coalfields Ltd. in dismissing Sh.

Gandu Pradhan, General Mazdoor, from service is legal and justified? If not, to what relief is the workman entitled?"

Shri Gandu Pradhan was General Mazdoor, employed in Dalurband Colliery, Pandaveshwar Area of M/s. Eastern Coalfields Limited. From the case of both the parties it is clear that he was dismissed from the service due to illegal absence from his duty from 21-01-94 to 18-07-94 without any information to the Management.

The case of the management is that Shri Pradhan became absent from 21-01-94 and he did not inform the management about his absence. Hence charge of misconduct was framed against him by charge sheet No. DBC/CS/91/1826 dt. 25/28-07-94. A copy of the charge sheet was served to the workman and a domestic enquiry was started in his presence in fair manner and charges levelled against him was found to be established during enquiry and on that basis he was dismissed from service vide letter No. 06 SF/11603 dated 08-01-95 by the competent authority which was communicated by the agent. Further, case of the management is that Shri Pradhan filed Title Suit No. 21/95 in the Court of Second Munshif Court, Asansol and obtained an order of injunction against the order of dismissal and in that view of the matter the order of dismissal was kept in abeyance and Shri Pradhan was allowed to join his duties from 20-03-95. Ultimately Title Suit filed by Shri Pradhan was dismissed by the Court of Munsif, Asansol, by order dated 17-04-97 and consequently an order of dismissal was reinforced. Further case of the management is that the misconduct of workman has been fully established during the domestic enquiry and hence the order of dismissal is legal and justified and the workman is not entitled to get any relief.

On the other hand the case of workman is that Shri Pradhan fell ill from 21-01-94 and had to remain under treatment till his recovery. After recovery he reported for duty to the management on 19-07-94, but he was not permitted to join and he was served with a copy of charge sheet. It is admitted fact that on the order of injunction granted by the Learned Court of Munshif, Shri Pradhan was permitted to resume his duties w.e.f. 21-01-95 and continued his working till 07-05-97 and ultimately the suit was dismissed by the Learned Court of Munshif in the default of appearance of plaintiff. It is further stated that the issue was amicably settled and in this light of the matter the Union did not like to pursue the matter in the Court and due to this fact the Suit was dismissed and after dismissal of the Suit, the management served with a copy of dismissal to the workman. It is further stated that order of dismissal is not justified and punishment is too severe.

During argument the Union did not challenge the fairness of domestic enquiry and hence presuming the fact that finding of enquiring Officer during domestic enquiry is correct, both the parties argued their cases on the point of quantum of punishment.

In view of above discussion it is clear that the finding of enquiring Officer regarding the absence of the workman from duty is correct. Now only question to be decided is as to whether the punishment of dismissal from service is justified, in proportion to the misconduct committed by the workman. In this regard Learned Lawyer for the management submitted that the workman remained absent without any justification and prior intimation to the management and hence he has been rightly dismissed from the service. But in principle he fairly admitted that dismissal from service is capital punishment for the worker.

On the other hand Chief General Secretary of the Union submitted that there is nothing on the record to show that the workman has committed such default earlier during his whole service period. He submitted that it was the first misconduct on the part of the workman and on the ground that he was ill. In this regard he pointed out the letter dated 05-09-94 signed on 03-09-94 and letter dated 14-12-94 signed on 12-12-94 issued by the agent of the colliery to the management. A photo copy of both the letters have been filed by both the parties and hence the letters are admitted by the parties. The Chief General Secretary submitted that even the agent has recommended twice by those letters for permitting the workman to join the service and to punish him by stoppage of one annual increment. Learned Lawyer for the management did not deny the existence of these letters. In view of the above circumstances it was submitted on behalf of the workman that the order of dismissal is very hard for the workman and it is too severe to the proportion of misconduct.

From perusal of the record it is clear that it has been pleaded by the workman that he became absent from 21-01-94 to 18-07-94 due to his illness and this plea was taken by him during the domestic enquiry also, but there is no finding by the enquiry Officer that the plea of illness taken by the workman was false. And hence there will be natural inference that the workman became absent due to his illness. Only fault on the part of workman is that during the whole period of his absence he did not inform the management and for this nature of fault the punishment of dismissal from service is uncalled for and it is too severe.

I perused the photo copy of letters of agent of the colliery, one dated 05-09-94 and the other dated 14-12-94 in which considering the nature of misconduct, the agent has recommended to permit the

workman to join his duties and has recommended the punishment of stoppage of one annual increment. It is also clear from the record and admitted by the parties that during the pendency of Title Suit in the Court of Munshif the workman was permitted to join his duties on 20-03-95 and he continued to serve the management till the year 1997. It is also admitted that during whole period of his service it was the first misconduct on the part of workman and hence in my opinion also the punishment of dismissal is not justified and accordingly the order of dismissal of the workman from the service is hereby set aside. The management is directed to permit the workman to join his duties with back wages and the workman will be punished by stoppage of one annual increment. Accordingly, in the above manner, the Award is passed.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 18 फरवरी, 2002

का.आ. 878.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोज्कों और उनके कर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल के पंचाट (संदर्भ संख्या 81/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-2002 को प्राप्त हुआ था।

[सं. एल.-22012/44/2000-आई.आर. (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 18th February, 2002

S.O. 878.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 81/2000) of the Central Government Industrial Tribunal-cum-L.C., Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 15-02-2002.

[No. L-22012/44/2000-IR-(C-II)]
N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ASANSOL
Present : Shri Ramjee Pandey,

Presiding Officer.

REFERENCE NUMBER 81 OF 2000

Parties Kumardih 'A' Colliery of M/s.
E.C. Ltd. through its Agent.
Employer

Vrs.

1. Shri K.D. Banerjee,
2. Shri D. Banerjee Workers
through Ukhra Colliery Mazdoor
Union.

Appearances :

For the management : Shri P.K. Das, Advocate
For the workman

(Union) : None

Industry : Coal

State : West Bengal

Dated 23rd January, 2002

AWARD

In exercise of powers conferred by the clause (d) of sub-section(1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947, Govt. of India through the Ministry of Labour has referred the following disputes for adjudication.

"Whether the action of the management of Kumardih 'A' Colliery of M/s. E.C. Ltd. in not giving notional Seniority to Sh. K. D. Banerjee and Sh. D. Banerjee in clerical grade I from 18-12-92 is legal and justified ? If not, to what relief the workman are entitled ?"

After receipt of reference summons were issued to the parties by registered post. In pursuance of the summon management has appeared through Shri P.K. Das, Advocate. Despite service of summon none appeared on behalf of the Union (Workman).

Shri P.K. Das, Advocate, produced a "Memorandum of Settlement" in form H in seven copies duly signed by the authority of management and Shri C.S. Banerjee Jr. General Secretary of the Union, which indicates that parties have amicably settled the dispute. According to the settlement by the parties Shri K.D. Banerjee and Shri Dipak Banerjee, both the clerks, shall be given notional seniority in Clerical Grade-I from 18-12-92 which shall not attract any re-fixation in their respective grade.

Despite service of summons none appeared physically on behalf of the Union which also indicates that now the Union has got no dispute. Shri P. K. Das, Advocate, appearing for the management has produced the "Memorandum of Settlement" and he certified that Shri C.S. Banerjee Jr. General Secretary of the Union has signed the memorandum of settlement and his signature is genuine.

Hence, let a settlement Award be passed. The "Memorandum of Settlement" will form part and parcel of the Award.

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 19 फरवरी, 2002

का.आ. 879.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन म, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कामगारों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम हैदराबाद के पंचाट (संदर्भ संख्या 152/2001) को प्रकाशित करता है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल-22025/1/2002आई.आर. (सं-II)]

एन.पी. केशव, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 879.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 15 /2001) of the Central Government Industrial Tribunal-cum-LC., Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR (C-II)]

N.P. KESAVAN Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present

Shri E. ISMAIL

Presiding Officer

Dated 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D.

No. 152 of 2001

(ID No. 86/98 Transferred from Labour Court-III, Hyderabad)

Between :

Sri R. Subhash

C/o F.C.I.

MRM Miryalaguda-508207.

—Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad,

2. The District Manager,
Food Corporation of India,
Nalgonda District

—Respondents

Appearances :

For the Petitioner: M/s G. Ravi Mohan

For the Respondent : Sri B.G. Ravindra Reddy

AWARD

This case I.D. No. 86/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D.No.152/2001. This is a case taken under Sec. 2 A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India Nalgonda District. He worked from Jan. 1977 to 4th Dec. 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan. 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this

regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateshwarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioner's claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court Under Sec. 2A(1) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance

of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may by pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petitioner is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill. Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transoort Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 worker and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that

the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending. Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his service by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri R. Subhash examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah. obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex.W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3, Ex. W4 is the Xerox copy of Service certificate for the

period from 2-2-1977 to 2-12-1977 issued by the Asst. Manager (Depot) Mr. Ratna Swamy. The original service certificate was submitted to the RLC(C), Hyderabad Ex. W5 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, '77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W5 is forged and created. That they themselves filed original of Ex. W5 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A. P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said

contractor. There is no prictice of engaging casual labour for H & T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex.M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex.M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W5 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any licence before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateshwarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that copy of Order in WP No. 9008/92 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex.W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex.W2 is also served to the said effect. Ex.W3 is the failure report of the ALC(C). Ex.W5 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were

again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any licence of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis given artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sections 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain zerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is along period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT

page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein Their Lordships held dispensing with services of persons engaged on daily wages in a Government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR(67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law Loses- their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec.2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to

clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal cum Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which show daily rated sweeper attendance is from the month of October '77 to January '78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1)LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 wherein Their Lordships held that where there was wholesale discharge of workmen Their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 Their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D.No. 164/2001 states that the petitioner in that case worked only for three

months two days, the others are Xerox copies witho ut filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for Petitioner :	Witness examined for the Respondent :
WW1 : Sri R. Subhash	MW1 : Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

Ex.W1: Conciliation order of ALC(C) dt. 10-9-93
Ex.W2: Lr. Of ALC(C) dt. 9-5-94
Ex.W3: Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3
Ex.W4: Copy of the service certificate dt. 10-12-77
Ex.W5: Copy of the attendance register of Helpers & Sweepers of FCI

Documents marked for the Respondent

Ex.M1: Copy of the tender and the contract dt 1-3-74
Ex.M2: Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C)
Ex.M3: Lr. From Govt. of India, Min. of Labour Dt. 17-6-97
Ex.M4: Notice under Arbitration Act and Arbitration Award dt. 25-1-89

नई दिल्ली, 19 फरवरी, 2002

का.आ. 880.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 153/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2002 को प्राप्त हुआ था।

[सं. एल-22025/1/2002-आई.आर. (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th February, 2002

S. O. 880.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 153/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR (C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present

Shri E. ISMAIL

Presiding Officer

Dated the 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 165 of
2001

(ID No. 87/98 Transferred from Labour Court-III
Hyderabad)

Between :

Sri V. Venkateshwarlu
C/o. F.C.I.,

MRM Miryalaguda-508207. ..Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.
2. The District Manager,
Food Corporation of India,
Nalgonda District. ..Respondents.

Appearances :

For the Petitioner : M/s G. Ravi Mohan

For the Respondent : M/s B. G. Ravindra Reddy

AWARD

This case I.D. No. 87/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No.153/2001. This is a case taken under Sec. 2 A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in

the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India Nalgonda District. He worked from Jan' 1977 to 4th Dec' 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan' 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateshwarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioner's claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three

petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petitioner is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjiah, J. Veeraswamy and V. Venkateshwarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication."

The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation; hence there is not question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri V. Venkateshwarlu examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex.W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3., Ex. W4 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors

used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex.W4 is forged and created. That they themselves filed original of Ex.W4 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Cooperative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex.M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C) Ex.M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W4 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed

any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateshwarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that copy of Order in WP No. 9008/92 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex.W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex.W2 is also served to the said effect. Ex.W3 is the failure report of the ALC(C). Ex.W4 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD

page 955 wherein it was held that petitioner was appointed on tenure basis given artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be re-instated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALJ page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamati Employee contractors of Singareni Collieries Co. Ltd., they are not

entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the central government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR(67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law Loses- their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec.2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which show daily rated sweeper attendance is from the month of Octobre '77 to January '78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. There-

fore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1)LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 where in their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filedal though he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various

contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for Petitioner :	Witness examined for the Respondent :
WW1: Sri V. Venkatesh- warlu	MW1 : Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

Ex.W1: Consiliation order of ALC(C) dt. 10-9-93

Ex.W2: Lr. Of ALC(C) dt. 9-5-94

Ex.W3: Failure of conciliation report of ALC(C)
vide Lr. No. 8(1)1993-E3

Ex.W4: Copy of the attendance register of Helpers
& Sweepers of FCI

Documents marked for the Respondent

604 GI/2002—20.

Ex.M1: Copy of the tender and the contract dt. 1-3-74

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Ex.M3: Lr. From Govt. of India, Min. of Labour, Dt. 17-6-97

Ex.M4: Notice under Arbitration Act and Arbitration Award dt. 25-1-89

नई दिल्ली, 19 फरवरी, 2002

का.आ. 881.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 154/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल-22025/1/2002-प्राई.आर. (सी-II)]

एन.पी. केशवान, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S. O. 881.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 154/2001) of the Central Government Industrial Tribunal-cum-LC., Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT AT HYDERABAD

Present

Shri E. ISMAIL

Presiding Officer

Dated the 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 165 of
2001

(ID No. 88/98 Transferred from Labour Court-III,
Hyderabad)

Between :

Sri K. Venkanna.

C/o. F.C.I.,

MRM Miryalaguda-508207. ..Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District. ..Respondents.

Appearances :

For the Petitioner : M/s G. Ravi Mohan

For the Respondent : Sri B. G. Ravindra Reddy

AWARD

This case I.D. No. 88/98 is transferred from Labour Court III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 154/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan. 1977 to 4th Dec. 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan., 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor

to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also, the petitioner made several representations to ALC(C) to send the dispute to the Government. However, no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswaralu, N. Anjaiah and J. Veera Swamy filed W.P. No. 9008/92 that prior to filing of the W.P. the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in W.P. No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December, '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given

notice pay. Hence, the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the foodgrains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd. was the contractor from 22-4-1974 to

14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and he Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in W.P. No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri K. Venkanna examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were

paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the field of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the service certificate issued by the Asstt. Manager (Depot) dt. 10-12-77. The petitioner deposed that he worked as a daily rated casual helper to that effect he has produced an original of certificate marked as Ex. W4 wherein it is stated that the petitioner worked as a daily rated casual labour for the period from 12-1-77 to 10-12-77. Ex. W5 is the attendance register maintained by the FCI. He could get the copy of this from the RLC(C) which was filed by the FCI during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register, etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 1977 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in FCI and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the Corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any W.P. against the said proceedings of ALC(C). He denied that Ex. W5 is forged and created. That, they themselves filed original of Ex. W5 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the FCI, Vijayawada deposed as MW1 and stated that 22-12-1977

to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the FCI used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. FCI has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the FCI. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He cannot say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labourer for H&T works in FCI. He never worked during January, 1977 to December, 1978 as casual labour under FCI. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 where in the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by FCI nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W5 was not maintained by the FCI. In the cross-examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that these contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a Writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W5 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the FCI, who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among these 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross-examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in W.P. No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases, page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in FCI at any point of time.

That it has come in the evidence that FCI used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The FCI has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief whatsoever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of

order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court—Deprives them remedy available to them in law—Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the FCI to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 77 to January, 78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in this case wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561.

Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in this case states that the petitioner worked only for three months two days, in other cases they are Xerox copies without filing the original and as in some 4 or 5 cases J. Veeraswamy's certificate is filed including this case although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the FCI even in cases where service certificate is filed. For example as stated in the present case, that is in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court—III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme

Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witness examined for the Petitioner	Witness examined for the Respondent
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WW1 ; Sri K. Venkanna	MW1 : Sri M. Siva Rama Krishna
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Documents marked for the Petitioner/Union

Ex. W1	Conciliation order of ALC(C) dt. 10-9-93.
Ex. W2	Lr. of ALC(C) dt. 9-5-94.
Ex. W3	Failure of conciliation report of ALC(C) vide Lr. No. 8(1) 1993-E3.
Ex. W4	Copy of service certificate dt. 10-12-1977.
Ex. W5	Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

Ex. M1	Copy of the tender and the contract dt. 1-3-74.
Ex. M2	Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
Ex. M3	Lr. from Govt. of India, Min. of Labour dt. 17-6-97.

Ex. M4 Notice under Arbitration Act and
Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का.आ. 882.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध श्रमिकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 155/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल-22025/1/2002-आई.आर. (सी II)]
एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S. O. 882.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 155/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT AT HYDERABAD

Present :-

Shri E. ISMAIL
Presiding Officer

Dated :- 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 155 of 2001
(ID No. 89/98 Transferred from Labour Court-
III, Hyderabad)

Between :-

Sri P. Prasad
C/O F.C.I.,
MRM Miryalaguda-508297.

...Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

.. Respondents.

Appearances :

For the Petitioner : M/s G. Ravi Mohan

For the Respondent : Sri B. G. Ravindra Reddy

AWARD

This case I.D. No. 89/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D.No. 155/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan. 1977 to 4th Dec., 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan. 1997 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal arbitrary and unjust.

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but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC (C) to send the dispute to the Government. However, no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed W.P. No. 9008/92 that prior to filing of the W.P. the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in W.P. No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgment of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December, '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence, the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become

difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the foodgrains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd. was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal

on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a W.P. No. 9008/92 seeking directions when the W.P. was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in W.P. No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri P. Prasad examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along-with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the representation made by the

union to the ALC(C). Ex. W5 is the order in W.P. No. 9008/92 dated 16-9-1997. Ex. W 6 is the attendance register maintained by the FCI. He could get the copy of this from the RLC(C) which was filed by the FCI during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register, etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in FCI and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the Corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any W.P. against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That, they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager Mechanical at the District Office of the F.C.I. Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. FCI has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labourer for H&T

works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross-examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that these contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a Writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W4 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working

till 1984 under contractors after having worked with the F.C.I, who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was locking after stock by spraying pesticides etc. That MW1 admitted in the cross-examination he has not filed any licence of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgment in W.P. No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The FCI has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain Xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what soever. He relied on the following Judgements. 1992

2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court—Deprives them remedy available to them in law—Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the FCI to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment

under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 77 to January, 78, that is only for 4 months. And those who have produced service certificates all xerox copies except one in LCID No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case

because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the FCI even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court—III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the FCI. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and moreover they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of FCI asking them not to engage them. So it can safely be concluded that these persons did work for FCI although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the FCI although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractors or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the FCI. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labourers from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witness examined for the Petitioner	Witness examined for the Respondent
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WW1 : Sri P. Prasad	MW1 : Sri M. Siva Rama Krishna
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Documents marked for the Petitioner/Union

Ex. W1	Conciliation order of ALC(C) dt. 10-9-93.
Ex. W2	Lr. of ALC(C) dt. 9-5-94.
Ex. W3	Failure of conciliation report of ALC(C) vide Lr. No. 8(1) 1993-E3.
Ex. W4	Union's representation dt. 16-8-93
Ex. W5	Order in WP No. 9008/92 dt. 16-9-97.
Ex. W6	Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

Ex. M1	Copy of the tender and the contract dt. 1-3-74.
Ex. M2	Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
Ex. M3	Lr. from Govt. of India, Min. of Labour dt. 17-6-97.
Ex. M4	Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का.आ. 883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 193/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल-22012/7/2001-आई.आर. (सी-II)]

एन.पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 883.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 193/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22012/7/2001-IR (C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.
Dated : 10th January, 2002
Industrial Dispute No. 193/2001

BETWEEN

Sri Mohd. Saveer,
C/o Sri Md. Gulam Rasool,
General Secretary,
Swatantra Boggu Gani Karmika Sangam,
H. No. 5030122, Civil Lane, Yellandu,
Khammam-507123. . . Petitioner.

AND

The General Manager,
M/s. S.C.C. Ltd.,
Yellandu, Dist. Khammam. . . Respondent.

APPEARANCES :

For the Petitioner : Nil.
For the Respondent : Sri J. Parthasarathi, Sri V.
Hariharan & Sri A.
Chandrasekhar.

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/7/2001-IR (CM.II) dated 28-8-2001 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

"Whether the action of the management of M/s SCCL, Yellandu in terminating the services of Sri Md. Saveer, MV Driver JKOC, Yellandu w.e.f. 1-2-1999 is legal and justified? If not, what relief he is entitled to?"

In spite of several adjournments given from 15-10-2001 the petitioner was continuously absent for seven adjournments including 10th January, 2002. Hence, heard the arguments of the respondent's counsel. As the petitioner has not turned-out in spite of number of adjournments and the petitioner/union has failed to produce any evidence in support of his claim. Therefore, the reference is ordered against the petitioner and it is held that the petitioner is not entitled for any relief.

Accordingly a 'Nil' Award is passed, Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced in the Open Court by me on this the 10th day of January, 2002.

E. ISMAIL, Presiding Officer

APPENDIX OF EVIDENCE

Witness examined for the Petitioner Witness examined for the Respondent

NIL

NIL

Documents marked for the Petitioner/Union

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 फरवरी, 2002

का.आ. 884.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 144/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल. 22025/1/2002-आई.आर. (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 884.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 144/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No. 144 of 2001

(ID No. 78/98 Transferred from Labour Court-III, Hyderabad)

BETWEEN

Sri V. Saidulu,

C/o F.C.I.,

MRM Miryalaguda-508207.

.. Petitioner.

AND

1. The Sr. Regional Manager,

Food Corporation of India,

HACCA Bhavan,

Hyderabad.

2. The District Manager,

Food Corporation of India,

Nalgonda District.

.. Respondents.

APPEARANCES :

For the Petitioner : M/s G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 78/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 144/2001. This is a case taken under Sec. 2A (2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are: That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan' 1977 to 4th Dec' 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation

of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan' 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The Corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petitioner is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore, Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Par-boiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The Corporation never controlled or supervised the work done by the contrac

labour. The petitioner might be one of those contract labourers. A. P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Shri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending. Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, 'The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore the Central Govt. has decided not to refer the above dispute for adjudication'. The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation. Hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri V. Saidulur examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at

Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The Corporation submitted attendance register to ALC (C)II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC (C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the Service certificate issued by the Asst. Manager (Depot) dt. 29-12-77. The petitioner deposed that he worked as a daily rated casual helper to that effect he has produced a copy of certificate marked as Ex. W4 wherein it is stated that the petitioner worked as a daily rated casual labour for the period from 2-1-77 to 29-12-77. Ex. W5 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is the central government corporation. He has not filed any document before the Court, showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has

not filed any WP against the said proceedings of ALC(C). He denied that Ex. W5 is forged and created. That they themselves filed original of Ex. W5 before the RLC(C).

15. Sri Sivaram Krishana, the Asst. manager, Mechanical at the District office of the F.C.I. Vijaya-wada deposed as MW1 and stated that 22-12-1977 to June 1991 he worked as Asst. manager at Miyalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanaryana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H & T works at MRM, Miyalaguda. The petitioner was one of the 256 workers who raised industrial dispute ALC (C) submitted a failure report. Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As one of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W5 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any licence before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended

the conciliation proceedings. In the said reference petitioner is one such. That S/Sri. V. Venkatswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec., 9A of the I.D. Act. No notice of termination was given as required under Sec. 25 F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC (C). Ex. W5 is the xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I. who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However, the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workman. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any licence of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgment in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join

duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The Corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence the petitioner is not entitled for any relief whatsoever. He relied on the following Judgements : 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file xerox copy of documents as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further held that right to postings is not available. Further held that daily wagers disengagement after completion of works have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time

and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held: lapse of over 15 years in approaching the Court Deprives them remedy available to them in Law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection whatsoever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October 1977 to January 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in case of LCID No. 164/2001 (ID No. 98/98) wherein the original certificates filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the xerox copies of the service certificates produced in so many cases also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988.

And, after all the writs etc, almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back, The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their Workman SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in case of LCID No. 164/2001 (ID No. 98/98) states that the petitioner worked only for three months two days in other cases they are xerox copies without filing the original and as in some-4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in the case, that is in L.C. I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioners have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because they continued working under some contractor or other till 1984 and they approached the

ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these case;. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent, No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in open Court, Transmit.

Dictated to Kum K. Phani Gowri Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner :	Witness examined for Respondent :
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WW1 : Sri V. Saidulu	MW1 : Sri M. Siva Rama Krishana
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Documents marked for the Petitioner/Union

Ex.W1: Conciliation order of ALC(C) dt. 10-9-93.

Ex. W2: Lr. Of ALC(C) dt. 9-5-94

Ex. W3 : Failure of conciliation report of ALC(C)
vide Ir. No. 8(1) 1993-E3

Ex.W4 : Copy of service certificate dt. 29-12-97

Ex. W5 : Copy of the attendance register of Helpers
& Sweepers of FCI.

Documents marked for the Respondent

Ex.M1: Copy of the tender and the contract dt.
1-3-74

Ex. M2: Copy of the minutes of conciliation pro-
ceedings dt. 4-4-96 and failure report of
ALC(C).

Ex. M3: Lr. From Govt. of India, Ministry of Labour
Dt. 17-6-97

Ec M4 : Notice under Arbitration Act and Arbitra-
tion Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का.अ. 885.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रिय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कार्यकर्ताओं के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 146/2001) को प्रकाशित करता है, जो केन्द्रिय सरकार को 19/02/2002 को प्राप्त हुआ था।

[सं. एल-22025/1/2002-आई.आर. (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 885.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 146/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002

[No. L-22025/1/2002-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present :

Shri E. ISMAIL Presiding Officer

Dated 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 146 of 2001

(ID No. 80/98 Transferred from Labour Court-III, Hyderabad)

Between ;

Sri R. Venkatnarayana,

C/o F.C.I.,

MRM Miryalaguda-508207

..Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District

.. Respondent

Appearance :

For the Petitioner : M/s G. Ravi Mahan

For the Respondent : Sri B.G. Ravindra Reddy

AWARD

This case I.D. No. 80/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 146/2001. This is a case taken under Sec. 2A (2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2 Brief averments of the petition are: That the Respondent Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors Therefore the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District He worked from Jan' 1977 to 4th Dec' 1978 The petitioner was directly under the control of the 2nd Respondent The petitioner worked continuously for the above said period without any break in service The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India He worked in the same depot in the year 1984 The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan' 1977 till December, 1978 instead of absorbing the petitioner into service The Respondent intentionally instructed the contractor to remove the petitioner from service Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by

ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employees of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7 The petitioner is uneducated inspite of his having made oral representations to the Respondent

to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility a was provided with a limited number of casual workers and subsequently Par-boiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report

to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Shri N. Anjaiah, J. Verraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking direction when the WP was pending. Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus. "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore the Central Govt. has decided not to refer the above dispute for adjudication". The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri V. Venkatnarayana examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC (C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC (C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is

no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the Xerox copy of service certificate for the period from 12-1-77 to 10-12-77 issued by the Asstt. Manager (Depot) Mr. Ratna Swamy. The original service certificate was submitted to the RLC (C) Hyderabad. Ex. W5 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a Central Government Corporation. He has not filed any documents before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 77 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W5 is forged and created. That they themselves filed original of Ex. W5 before the RLC (C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the FCI, Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the FCI used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. FCI has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the FCI. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to

A.P. Transport Workers Co-operative Society; Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in FCI. He never worked during January, 77 to December, 78 as casual labour under FCI. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by FCI nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W5 was not maintained by FCI. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateshwarlu, N. Anjaiah and J. Veera Swamy filed a Writ No. 9008/92. It is incorrect that copy of Order in WP No. 9008/92 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W5 is the Xerox copy of the attendance register, which shows that

they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the FCI, who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in W.P. No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in FCI at any point of time. That it has come in the evidence that FCI used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The FCI has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of

employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements : 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a Government Department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 520 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court Deprives them remedy available to them in law Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the FCI to say that they have no connection what so ever with this petitioner, but he is

one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 77 to January, 78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2001 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950 83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Governmental Department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certifi-

cates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the FCI even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (I.D. 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the FCI. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for FCI no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of FCI asking them not to engage them. So it can safely be concluded that these persons did work for FCI although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the FCI. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the FCI although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the FCI. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.
604 GI/2002—23

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witness examined for the Petitioner	Witness examined for the Respondent
WW1: Sri R. Venkatanarayana	MW1: Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

Ex. W1	Conciliation order of ALC(C) dt. 10-9-93.
Ex. W2	Lr. of ALC(C) dt. 9-5-94.
Ex. W3	Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3.
Ex. W4	Copy of the service certificate dt. 10-12-77.
Ex. W5	Copy of the attendance register of Helpers & Sweepers of FCI.
Documents marked for the Respondent	
Ex. M1	Copy of the tender and the contract dt. 1-3-74.
Ex. M2	Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
Ex. M3	Lr. From Govt. of India, Min. of Labour Dt. 17-6-97.
Ex. M4	Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का.अ. 886.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 163/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2002 को प्राप्त हुआ था।

[सं. एल-22025/1/2002-आई.प्रार. (सी-II)]
एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 886.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 163/2001) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and

their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR (C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT ;

Shri E. Ismail, Presiding Officer

Dated, 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No.163
of 2001

(ID No.97/98 Transferred from Labour Court-III
Hyderabad)

BETWEEN ;

Sri Sk. Jani Miya,
C/o F.C.I.

MRM Miryalaguda-508207.....Petitioner
AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.....Respondent

APPEARANCES :

For the Petitioner : M/s Ravi Mohan

For the Respondent : Sri B.G. Ravindra Reddy

AWARD

This case I.D. No. 97/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D.No.163/2001. This is a case taken under Sec.2 A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P.No.8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January 1977 to 4th December, 1978. The petitioner was directly under

the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from January 1977 till December, 1978, instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No.9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December, '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the

disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec.2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec.2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for

handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the casual labour. The petitioner might be one of these contract labourers. A.P. Transport Workers Co-operative Society Ltd. was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workman has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication". The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to

be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri SK Jani Atiya examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex.W1 dated 1-9-1993. Ex.W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex.W3. Ex.W4 is the representation made by the union to the ALC(C). Ex.W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex.W6 is the service certificate issued by the Asst. Manager on 2-12-77. The petitioner deposed that he worked as a daily rated casual helper to that effect he has produced a copy of service certificate marked as Ex.W6 wherein it is stated that the petitioner worked as a daily rated casual labour for the period from 1-2-77 to 2-12-77. Ex.W7 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the Corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to

pay him. He admitted that he did not file any document showing that he received any amount from the Corporation. After 1978, he worked under the contractors namely S/Sri V. Satyanarayana Reddy, Konduri Vceraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W7 is forged and created. That they themselves filed original of Ex. W7 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex.M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex.M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex.W7 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not

filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex.W5 is filed before the ALC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec.9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex.W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex.W2 is also served to the said effect. Ex.W3 is the failure report of the ALC(C). Ex.W7 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgment in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service that Sec. 25F was not complied with the termination was therefore bad. He also relied on 1996(3) ALD

page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case it filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief whatsoever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001/2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec.25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department, therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wages disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee, contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of

the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no national basis on which the central government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held lapse of over 15 years in approaching the Court-Deprives them remedy available to them in Law-Losses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection whatsoever with this petitioner but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A (2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec-2A(2) is of the State Government. However as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal cum Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October '77 to January '78 that is only for 4 months. And those who have produced service certificates are all xerox copies except one in case of LCID No. 164/2001 (ID No. 98/98) wherein the original certificates filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore

they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workman SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977)4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a government department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said; lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C. I.D. No 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove

by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in open Court. Transmit.

Dictated to Kum K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner:	Witness examined for the Respondent:
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WW1: Sri S. K. Jani Miya	MW1: Sri M. Siva Rama Krishna
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Documents marked for the Petitioner/Union

- Ex.W1: Conciliation order of ALC(C) dt. 10-9-93
- Ex.W2: Lr. Of ALC(C) dt. 9-5-94
- Ex.W3: Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3
- Ex.W4: Union's representation dt. 16-8-93
- Ex.W5: Order in WP No.9008/92 dt. 16-9-97
- Ex.W6: Copy of service certificate dt. 2-12-77
- Ex.W7: Copy of the attendance register of Helpers & Sweepers of FCI

Documents marked for the Respondent

- Ex.M1: Copy of the tender and the contract dt. 1-3-74
- Ex.M2: Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C)
- Ex.M3: Lr. From Govt. of India, Min. of Labour Dt. 17-6-97
- Ex.M4: Notice under Arbitration Act and Arbitration Award dt. 25-1-89

नई दिल्ली, 19 फरवरी, 2002

का.आ. 887—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 164/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल-22025/1/2002-आई.आर. (सी-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 887.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.164/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No.L-22025/1/2002-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present

Shri E. Ismail

Presiding Officer

Dated : 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D.No. 164 of 2001
(ID No.98/98 Transferred from Labour Court-III, Hyderabad)

Between :

Sri B. Malla Reddy,
C/o F.C.I.,
MRM Miryalaguda-508207

...Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.
2. The District Manager,
Food Corporation of India,
Nalgonda District

.. Respondents

Appearances :

For the Petitioner : M/s G Ravi Mohan

For the Respondent : Sri B.G. Ravindra Reddy

AWARD

This case I.D. No. 98/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D.No.164/2001. This is a case taken under Sec.2 A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P.No.8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan. 1977 to 4th Dec 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of

his tenure as casual labour with effect from Jan. 1977 till December, 1978, instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioner's claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No.9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 1977 to December, 78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period

of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec.2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec.2A(2) is not attracted.

10. Modern Rice Mill to Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-opera-

tive Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri B. Malla Reddy examined himself as WWI and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Alongwith him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No

appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex.W1 dated 1-9-1993.. Ex.W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex.W3. Ex.W4 is the representation made by the union to the ALC(C). Ex.W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex.W6 is the service certificate issued by the Asst. Manager (Depot) dt. 2-12-77. The petitioner deposed that he worked as a daily rated casual helper to that effect he has produced an original of certificate marked as Ex.W6 wherein it is stated that the petitioner worked as a daily rated casual labour for the period from 1-9-77 to 2-12-77. Ex.W7 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Kenduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W7 is forged and created. That they themselves filed original of Ex. W7 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District Office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 17-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex.M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute ALC(C) submitted a failure report Ex.M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex.M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex.W7 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any licence before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex.W5 is filed before

the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case when this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex.W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex.W2 is also served to the said effect. Ex.W3 is the failure report of the ALC(C). Ex.W7 is the Xerox copy of the attendance register which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgment in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was the afore bad. He also relied on 1996(3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case it filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. (1992) 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on (2001) 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on (1989) 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on (2000) 1 LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the

Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held: lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right it lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which show daily rated sweeper attendance is from the month of October '77 to January '78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in this case wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are

also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to (2000)1 LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-164 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said; lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in this case states that the petitioner worked only for three months two days, in others cases they are xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in the present case, that is in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various

contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. Ismail, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner: Witness examined for the Respondent:

WW1: Sri B. Malla Reddy MW1: Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

- Ex.W1: Conciliation order of ALC(C) dt. 10-9-93
- Ex.W2: Lr. of ALC(C) dt. 9-5-94
- Ex.W3: Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3
- Ex.W4: Union's representation dt. 16-8-93
- Ex.W5: Order in WP No.9008/92 dt. 16-9-97
- Ex.W6: Original of service certificate dt. 2-12-77
- Ex.W7: Copy of the attendance register of Helpers & Sweepers of FCI

Documents marked for the Respondent

- Ex.M1: Copy of the tender and the contract dt. 1-3-74
- Ex.M2: Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C)
- Ex.M3: Lr. from Govt. of India, Min. of Labour Dt. 17-6-97
- Ex.M4: Notice under Arbitration Act and Arbitration Award dt. 25-1-89

नई दिल्ली, 19 फरवरी, 2002

का.आ. 888.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 165/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई.आर. (सी. II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 165/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No. 165 of 2001

(I.D. No. 99/98 Transferred from Labour Court-III,
Hyderabad)

BETWEEN :

Sri Md. Yesudani,
C/o. F.C.I.,
MRM Miryalaguda-508207.

..Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

—Respondents

APPEARANCES :

For the Petitioner.—M/s. G. Ravi Mohan.

For the Respondent.—M/s. B. G. Ravindra Reddy.

AWARD

This case I.D. No. 99/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 165/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established

MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan., 1977 to 4th Dec., 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan., 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed W.P. No. 9008/92 that prior to filing of the W.P. the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in W.P. No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT

Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 77 to December, 78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's service were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as if is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the foodgrains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and she was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as she was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a W.P. No. 9008/92 seeking directions when the W.P. was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to

refer the above dispute for adjudication." The Hon'ble High Court of A.P. in W.P. No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri. Md. Yesudani examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the register. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no admissible settlement Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W6 is the attendance register maintained by the FCI. He could get the copy of this from the RLC(C) which was filed by the FCI during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register, etc., during the conciliation period. In the cross-examination, he deposed that the respondent corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent corporation alleging that they worked in FCI and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only

contractors used to pay him. He admitted that he did not file any document showing that he receive any amount from the corporation. After 1978 he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any W.P. against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the FCI, Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the FCI used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. FCI has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the FCI. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in FCI. He never worked during January, 77 to December, 78 as casual labour under FCI. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by FCI nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by FCI. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have

not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a Writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the FCI, who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in W.P. No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 604 GI/2002—25

296 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in FCI at any point of time. That it has come in the evidence that FCI used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The FCI has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements : 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service can not be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a Government Department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment can not be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd.,

they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court—Deprives them remedy available to them in law—Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the FCI to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 77 to January, 78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they

were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950 83 Page 152 64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Governmental Department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the FCI even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (I.D. 98/98 of Labour Court No. III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the FCI. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for FCI no doubt perhaps under different contractors and moreover they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of FCI asking them not to engage them. So it can safely be concluded that these persons did work for FCI although under various contractors but

the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witness examined for the Petitioner	Witness examined for the Respondent
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WW1 : Sri Md. Yesudani	MW1 : Sri M. Siva Rama Krishna
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Documents marked for the Petitioner/Union

Ex. W1	Conciliation order of ALC(C) dt. 10-9-93.
Ex. W2	Lr. of ALC(C) dt. 9-5-94.
Ex. W3	Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3.
Ex. W4	Union's representation dt. 16-8-93.
Ex. W5	Order in W.P. No. 9008/92 dt. 16-9-97.
Ex. W6	Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

Ex. M1	Copy of the tender and the contract dt. 1-3-74.
Ex. M2	Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
Ex. M3	Lr. From Govt. of India, Min. of Labour Dt. 17-6-97.
Ex. M4	Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. आ. 889.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 149/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई. आर. (सी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 889.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 149/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated, 31st December, 2001

Industrial Dispute L.C.I.D. No. 149 of 2001

(I.D. No. 83/98 Transferred from Labour Court-III,
Hyderabad)

BETWEEN

Sri G. Yadaiah, C/o F.C.I., MRM Miryalaguda-508207.	... Petitioner.
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AND

1. The Sr. Regional Manager, Food Corporation of India, HACCA Bhavan, Hyderabad.	. Respondents.
2. The District Manager, Food Corporation of India, Nalgonda District.	

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 83/98 is transferred from Labour Court—III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 149/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan., 1977 to 4th Dec., 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan., 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this

regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J Veera Swamy filed W.P. No. 9008/92 that prior to filing of the W.P. the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in W.P. No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 77 to December, 78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's service were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family.

and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1973 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility to as who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contractor labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one

among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a W.P. No. 9008/92 seeking directions when the W.P. was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in W.P. No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri G. Yaduah examined himself as WWI and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wage register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein

his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). dt. 16-8-93. Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W6 is the attendance register maintained by the FCI. Ex. W7 is the Xerox copy of Service certificate for the period from 10-1-77 to 10-12-77 issued by the Asst. Manager (Depot) Mr. Ratna Swamy. The original service certificate was submitted to the RLC(C). Hyderabad. He could get the copy of this from the RLC(C) which was filed by the FCI during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register, etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in FCI and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishana, the Asst. manager, Mechanical at the District office of the F.C.I. Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement

of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute ALC (C) submitted a failure report. Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any licence before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractor were not there during the said period. It is true that all these workman have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that copy of Order in WP No. 9008/92 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec., 9A of the I.D. Act. No notice of termination was given as required under Sec., 25 F or any wages paid. The petitioner

has marked Ex. W1 which is addressed to Anjaiah by ALC (C) about conciliation proceedings Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC (C). Ex. W5 is the Xerox copy of the attendance register which shows that they are the helpers and sweepers that is for the month from October 77 to January, 78. Hence, in view of all this voluminous evidences that the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the FCI who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However, the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner as looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC (C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioners to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with

certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements : 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court—Deprives them remedy available to them in law—Loses their rights as well. So the submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to

4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 77 to January, 78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quiet till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLE 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Governmental Department is not a retrenchment. That their dismissal

cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioner have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L. C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC (C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to

such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum K. Phani Gowri, Person\ Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner : Witness examined for Respondent :

WW 1 : Sri G. Ya'iaiah MW 1 : Sri M Siva Rama Krishna

Documents marked for the Petitioner/Union

- Ex. W 1 : Conciliation order of ALC (C) dt. 10-9-93
- Ex. W 2 : Lr. Of ALC (C) dt. 9-5-94
- Ex. W 3 : Failure of conciliation report of ALC (C) vide Lr. No. 8(1) 1993-E3
- Ex. W 4 : Union's representation dt. 16-8-93
- Ex. W 5 : Order in WP No. 9008/97 dt. 16-9-97
- Ex. W 6 : Copy of the attendance register of Helpers & Sweepers of FCI
- Ex. W 7 : Copy of the service certificate dt. 10-12-77

Documents marked for the Respondent

- Ex. M 1 : Copy of the tender and the contract dt. 1-3-74
- Ex. M 2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC (C)
- Ex. M 3 : Lr. From Govt. of India, Min. of Labour Dt. 17-6-97
- Ex. M 4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89

नई दिल्ली, 19 फरवरी, 2002

का. आ. 890.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, 604 GI/2002—26

केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 151/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई. आर. (सी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 890.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 151/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1 '2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated, 31st December, 2001

Industrial Dispute L.C.I.D. No. 151 of 2001

(I.D. No. 85/98 Transferred from Labour Court-III, Hyderabad)

BETWEEN,

Sri T. Iai Singh.

C/o F.C.I.

MRM Miryalaguda-508207

...Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager
Food Corporation of India,
Nalgonda District.

...Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I. D. No. 85/98 is transferred from Labour Court-III Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 151/2001. This is a case taken under Sec. 2A(2)

of the I. D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W. P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are ; That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations.

Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan' 1977 to 4th Dec' 1978. The petitioner was directly under the control of the 2nd Respondent. The Petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan' 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequently on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among these 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioner's claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I. D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. retreating that he worked from January, '77 to December '78 with R 2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to performs the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I. D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I. D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I. D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A (2) of I. D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore, Sec. 2 A (2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1974. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increase strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner, as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC (C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India

by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri T. Jai Singh examined himself as WW 1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from inspectors by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors.

They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein has claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the service certificate issued by the Asst. Manager (depot) dt. 29-12-77. The petitioner deposed that he worked as a daily rated casual helper to that effect he has produced a copy of service certificate where in it is stated that the petitioner worked as a daily rated casual labour for the period from 2-1-77 to 29-12-77. Ex. W 5 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC (C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC (C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated and there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC (C). He denied that Ex. W 5 is forged and created. That they themselves filed original of Ex. W 5 before the RLC (C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW 1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award

H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A. P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M 1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A. P. Transport workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC (C) submitted a failure report Ex. M 2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC (C). Ex. M 3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W 5 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint as a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workman have raised the dispute before the ALC (C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W 5 is filed before the RLC (C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I. D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W 1 which is addressed to Anjaiah by ALC (C) about conciliation proceedings. Ex. W 2 is also served to the said effect. Ex. W 3 is the failure-report of the ALC (C). Ex. W 5 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW 1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC (C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A. P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases Page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination.

of service. Therefore, prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wages disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Haulage Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribed any time limit for the

appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the central government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A (2) of A. P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec. 2A (2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore, direct applications can be entertained by the Central Govt. Industrial Tribunal cum Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October 77 to January 78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in LCID No. 164/2001 ID No. 98/98 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as

true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation ? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I. D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back ? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on *Shalimar Works Ltd and their workman* SCF 1953-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in case of LCID No. 164/2001 ID No. 98/98 states that the petitioner in that case worked only for three months two days, the other cases they are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioner have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in the case, that is in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were

removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC (C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witness examined for the Petitioner : Witness examined for Respondent :

WW 1 : Sri B. Jai Singh MW 1 : Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

Ex. W 1 : Conciliation order of ALC (C) dt. 10-9-93

Ex. W 2 : Lr. of ALC (C) dt. 9-5-94

Ex. W 3 : Failure of conciliation report of ALC (C) vide Lr. No. 8(1) 1993-E3

Ex. W 4 : Copy of service certificate dt. 29-12-77

Ex. W 5 : Copy of the attendance register of Helpers & Sweepers of FCI

Documents marked for the Respondent

Ex. M 1 : Copy of the tender and the contract dt. 1-3-74

Ex. M 2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC (C)

Ex. M 3 : Lr. From Govt. of India, Min. of Labour Dt. 17-6-97

Ex. M 4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89

नई दिल्ली, 19 फरवरी, 2002

का. आ. 891.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में विवादित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैबराबाद के पंचाट (संदर्भ संख्या 171/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एच.-22025/1/2002-आई आर. (सी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S. O. 891.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 171/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT AT HYDERABAD

Present

Shri E. ISMAIL

Presiding Officer

Dated 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 171 of
2001(ID No. 211/98 Transferred from Labour Court-
III, Hyderabad)

BETWEEN :

Sri Md. Siddique,
R/o 16-9-747/41,
Race Course Road,
Malakpet, Hyderabad.

..Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.2. The District Manager,
Food Corporation of India,
Nalgonda District.

..Respondents

APPEARANCES :

For the Petitioner : M/s G. Ravi Mohan

For the Respondent : Sri B. G. Ravindra Reddy

AWARD

This case I.D. No. 211/98 is transferred from Labour Court-III Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 171/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/D pots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year

1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan., 1977 to 4th Dec., 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan., 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking arbitration. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also, the petitioner made several representations to ALC(C) to send the dispute to the Government. However, no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjish and J. Veera Swamy filed W.P. No. 9008/92 that prior to filing of the W.P. the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in W.P. No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act.

Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 77 to December, 78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of her having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out him livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10 Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling

facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11 Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a W.P. No. 9008/92 seeking directions when the W.P. was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in W.P. No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri Md. Siddique examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wage register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included. Matter was referred to the Central Govt. A representation was made by the union of the ALC(C). The attendance register maintained by the FCI which was filed by the FCI during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register, etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in FCI and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation.

After 1978, he worked under the contractors namely S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any W.P. against the said proceedings of ALC(C). He denied that attendance register is forged and created. That they themselves filed original of attendance register before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the FCI, Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the FCI used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. FCI has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the FCI. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in FCI. He never worked during January, 77 to December, 78 as casual labour under FCI. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by FCI nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Attendance register was not maintained by the FCI. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any licence before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers

who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a Writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. Attendance register is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the FCI, who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in W.P. No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refu-

sing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in FCI at any point of time. That it has come in the evidence that FCI used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The FCI has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project herself as casual labour with certain Xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a Government department therefore is not a retrenchment. Further held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 42 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by

Employment Exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court Deprives them remedy available to them in law loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the FCI to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioners to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 77 to January, 78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 (I.D. No. 98/98) wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if

that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case as in some 4 or 5 cases J. Veeraswamay's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the FCI even in cases where service certificate is filed. For example as stated in the case that is in L.C.I.D. No. 164/2001 (I.D. 98/98 of Labour Court—III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the FCI. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for FCI no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of FCI asking them not to engage them. So it can safely be concluded that these persons did work for FCI although under various contractors but the petitioner have failed to prove by any satisfactory

evidence that they worked directly at the FCI. Seeing the evidence on record it can safely be concluded that they did work for the FCI although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the FCI. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her, corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witness examined for
the Petitioner

Witness examined for
the Respondent

WW1 : Sri. Md. Siddique MW1 : Sri M. Siva
Rama Krishna

Documents marked for the Petitioner

Documents marked for the Respondent

- Ex. M1 Copy of the tender and the contract dt. 1-3-74.
- Ex. M2 Copy of 1. minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
- Ex. M3 Lr. From Govt. of India. Min. of Labour dt. 17-6-97.
- Ex. M4 Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. आ. 892.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचि में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 172/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

{सं. एल.-22025/1/2002—आई. आर. (सी. II)}

एन. पी. केशवम, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 892.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publish the award (Ref. No. 172/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-TR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR
COURT AT HYDERABAD

Present

Shri E. ISMAIL

Presiding Officer

Dated - 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D No. 172 of 2001

(ID No 212/98 Transferred from Labour Court-III, Hyderabad)

Between :

Smt. Kamalamma,
C/o 16-9-749/41/1,
Old Malakpet,
Hyderabad-36.

...Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad

2. The District Manager,
Food Corporation of India,
Nalgonda District.

.. Respondents

Appearances :

For the Petitioner : M/s. G. Ravi Mohan

For the Respondent : Sri B.G. Ravindra Reddy

AWARD

This case I.D. No. 212/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 172/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. She worked from Jan., 1977 to 4th Dec., 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. She worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of her tenure as casual labour with effect from Jan., 1977 till Decem-

ber, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed W.P. No. 9008/92 that prior to filing of the W.P. the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in W.P. No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that she worked from January, 1977 to December, 1978 with R2 without any break in service, the petitioner repeated that after extracting work from petitioner as casual labour placed her at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respon-

dent having continued the petitioner from a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of her having made oral representations to the Respondent to reinstate her, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for her to eak out her livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the foodgrains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and she was paid as per the scheduled rates fixed under the H&T contract depending on the work done by her. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-opera-

tive Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as she was never engaged as casual labour at any point of time. Therefore, the allegation that she was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a W.P. No. 9008/92 seeking directions when the W.P. was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in W.P. No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Smt. Kamalamma examined herself as WW1 and deposed facts stated in the petition in the chief examination and added that she was supervising the stocks from insects by applying pesticides. Along with her there were 30 to 50 casual workers at Miryalaguda. That she used to be paid monthly salary. She worked continuously for two years. The respondent used to maintain attendance register and wages register and she used to sign on the registers. No appointment letters were issued. They

were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein her claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the attendance register maintained by the FCI. She could get the copy of this from the RLC(C) which was filed by the FCI during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register, etc., during the conciliation period. In the cross-examination, she deposed that the respondent corporation is a Central Government corporation. She has not filed any document before the Court showing that she worked for two years from January, 77 continuously under the respondent. She denied that there is no practice of engaging casual labourers directly by the corporation. It is true that she filed the present case after 20 years. She has not filed any representation or letter addressed to the Respondent corporation alleging that they worked in FCI and they were terminated from service at any point of time during the period from 1977 onwards. She denied that only contractors used to pay her. She admitted that she did not file any document showing that she received any amount from the corporation. After 1978 she worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any W.P. against the said proceedings of ALC(C). She denied that Ex. W4 is forged and created. That they themselves filed original of Ex. W4 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the FCI, Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the FCI used to award H&T work to private contractors

by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. FCI has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the FCI. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in FCI. She never worked during January, 77 to December, 78 as casual labour under FCI. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by FCI nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W4 was not maintained by the FCI. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any licence before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that copy of the order W.P. No. 9008/92 is filed before the RLC(C). He denied that she is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service

with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W4 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the FCI, who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in W.P. No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore, prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in FCI at any point of time. That it has come in the evidence that FCI used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing

the works undertaken by the contractor. The corporation never controlled or supervised the work of the labour of the contractor that there was two different contractors during the said period. The FCI has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project herself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what soever. He relied on the following Judgements : 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a Government Department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by Employment Exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court Deprives them remedy available to them in law-

Loses their rights as well. So he submits that in lieu of this clear rulings the petitioner even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the FCI to say that they have no connection what so ever with this petitioner, but there among these workman approached the High Court and got the order. Wherein his Lordship directed those petitioners to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lord-

ships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Governmental Department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said; lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and as in some 4 or 5 cases J. Veer'swamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion petitioners have not proved by any reliable documentary evidence that they worked under the FCI even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (I.D. 98/98 of Labour Court—III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the FCI. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for FCI, no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of FCI asking them not to engage them. So it can safely be concluded that these persons did work for FCI although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the FCI. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the FCI although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely

applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the FCI. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and she shall be given preference over others in the matter of employment of casual labour even though on daily wages taking her seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her, corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witness examined for the Petitioner:	Witness examined for the Respondent:
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WW1 : Sm. Kamalamma	MW1 : Sri M. Siva Rama Krishna
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Documents marked for the Petitioner/Union

Ex. W1	Conciliation order of ALC(C) dt. 10-9-93.
Ex. W2	Lr. of ALC(C) dt. 9-5-94.
Ex. W3	Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3.
Ex. W4	Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

Ex. M1	Copy of the tender and the contract dt. 1-3-74.
Ex. M2	Copy of the (minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
Ex. M3	Lr. from Govt. of India, Min. of Labour dt. 17-6-97.
Ex. M4	Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. आ. 893.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 173/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई. आर. (सी.-II)]

एन. पी. केशवन डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O.893—:In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref No. 173/2001) of the Central Government Industrial Tribunal-cum-Labour Court Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

PRESENT

Shri E. ISMAIL Presiding Officer

INDUSTRIAL DISPUTE L.C.I.D. No. 173 of 2001 (ID No. 213/98 Transferred from Labour Court-III Hyderabad)

Between :

Sri B. Narasimha,
C/o. 16-9-749/41,
Race Course Road, Old Malakpet,
Hyderabad

..Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad

2. The District Manager,
Food Corporation of India,
Nalgonda District.

Respondents

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan

For the Respondent : Sri B.G. Ravindra Reddy

AWARD

This case I.D. No. 213/98 is transferred from Labour Court-II, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 173/2001. This is a case taken under Sec. 2A (2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan' 1977 to 4th Dec' 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeing appointment on the basis of his tenure as casual labour with effect from Jan' 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However, no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of

250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioner's claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I. D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order

dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Res-

pondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy & V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri B. Narasimha examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the old of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex.W1 dated 1-9-1993. Ex.W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex W4 is the representation made by the union to the ALC(C). Ex.W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex.W6 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I.

during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex.W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein

the work was award to A.P. Transport workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex.M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex.M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex.W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed an license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex.W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec.25F or any wages paid. The petitioner has marked Ex.W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex.W2 is also served to the said effect. Ex.W3 is the failure report of the ALC(C). Ex.W4 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among

those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WB No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labours of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief whatsoever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held

daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the central government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held: lapse of over 15 years in approaching the Court—Deprives them remedy available to them in law—Loses their right as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection whatsoever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2(A)(2) is of the State Government. However, as stated in the beginning of the case itself the

Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court cases Page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court No. III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and moreover they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miyalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labour from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner : Witness examined for the Respondent :

WW1: Sri B. Narasimha MW1: Sri M. Siva
Rama Krishna

Documents marked for the Petitioner/Union

- Ex.W1: Conciliation order of ALC(C) dt. 10-9-93
Ex.W2: Lr. of ALC(C) dt. 9-5-94
Ex.W3: Failure of conciliation report of ALC(C)
vide Lr. No.8(1)1993-E3
Ex.W4: Union's representation dt. 16-8-93
Ex.W5: Order in WP No. 9008/92 dt. 16-9-97
Ex.W6: Copy of the attendance register of Helpers
& Sweepers of FCI

Documents marked for the Respondent

- Ex.M1: Copy of the tender and the contract dt.
1-3-74
Ex.M2: Copy of the minutes of conciliation proceed-
ings dt. 4-4-96 and failure report of ALC(C)
Ex.M3: Lr. From Govt. of India, Min. of Labour
dt. 17-6-97
Ex.M4: Notice under Arbitration Act and Arbitra-
tion Award dt. 25-1-89

नई दिल्ली, 19 फरवरी, 2002

का. आ. 894.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 174/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एन.-22025/1/2002-आई आर (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 174/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated :—31st December, 2001

Industrial Dispute L.C I.D. No. 174 of 2001

(I.D. No. 214 98 Transferred from Labour Court-III, Hyderabad)

BETWEEN :

Sri K. Narasimha,
C/o 16-9-749/41,
Race Course Road,
Old Malakpet,
Hyderabad.

Petitioner.

AND

1 The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

.. Respondents.

APPEARANCES :

For the Petitioner.—M/s. G. Ravi Mohan.

For the Respondent.—Sri B. G. Ravindra
Reddy.

AWARD

This case I.D. No. 214/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 173/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan., 1977 to 4th Dec., 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were

terminated in the month of December, 1978. After the illegal termination petitioner has been making presentations to the Respondent Corporation.

Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan., 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed W.P. No. 9008/92 that prior to filing of the W.P. the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in W.P. No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 77 to December, 78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not

given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner from a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as a re just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the foodgrains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the

same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd. was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a W.P. No. 9008/92 seeking directions when the W.P. was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9-years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in W.P. No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri K. Narasimha examined himself as WWI and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in W.P. No. 9008/92 dated 16-9-1997. Ex. W6 is the attendance register maintained by the FCI. He could get the copy of this from the RLC(C) which was filed by the FCI during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register, etc. during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in FCI and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed

any W P against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the FCI, Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the FCI used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the schedule rates fixed for H&T contracts depending on the work done by him. FCI has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the FCI. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in FCI. He never worked during January, 77 to December, 78 as casual labour under FCI. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by FCI nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the FCI. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen

have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a Writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W4 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the FCI, who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in W.P. No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner, was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it

was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in FCI at any point of time. That it has come in the evidence that FCI used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The FCI has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain Xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief whatsoever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a Government department therefore is not a retrenchment. Further held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by Employment Exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriat

Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court—Deprives them remedy available to them in law—Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the FCI to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioners to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is asserted by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation ? It has come in evidence that they worked as daily erated casual labour. No doubt, no limitation is

prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Government department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law losses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the FCI even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (I.D. 98/98 of Labour Court—III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the FCI. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for FCI no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of FCI asking them not to engage them. So it can safely be concluded that these persons did work for FCI although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the FCI. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the FCI although through contractors. More so in view of the exhibits filed by the respondent which shows

that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the FCI. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her, corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of Evidence

Witness examined for the Petitioner	Witness examined for the Respondent
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WW1 : Sri. K. Narasimha	MW1 : Sri M. Siva Rama Krishna
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Documents marked for the Petitioner/Union

Ex. W1	Conciliation order of ALC(C) dt. 10-9-93.
Ex. W2	Lr. of ALC(C) dt. 9-5-94.
Ex. W3	Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3.
Ex. W4	Union's representation dt. 16-8-93.
Ex. W5	Order in WP No. 9008/92 dt. 16-9-97
Ex. W6	Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

Ex. M1	Copy of the tender and the contract dt. 1-3-74.
Ex. M2	Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
Ex. M3	Lr. From Govt. of India, Min. of Labour dt. 17-6-97.
Ex. M4	Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. आ. 895.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 175/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल-22025/1/2002—आई आर (सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 895.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 175/2001) of the Central Government Industrial Tribunal-cum-LC. Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2000.

[No. L-22025/1/2002-IR (C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present

Shri E. ISMAIL

Presiding Officer

Date : 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 175 of 2001
(ID No. 215/98 Transferred from Labour Court-III,
Hyderabad)

Between :

Sri N. Nagaiah,
C/o 16-9-749/41,
Race Course Road, Malakpet,
Hyderabad,

.. Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District,

.. Respondent

APPEARANCES :

For the Petitioner : M/s G. Ravi Mohan

For the Respondent : Sri B.G. Ravindra Reddy

AWARD

This case I.D. No. 215/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 175/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established-MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan., 1977 to 4th Dec., 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan., 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceeding, but failed to report to the Government and the Government in turn could not refer the dispute. In this

regard also, the petitioner made several representations to ALC(C) to send the dispute to the Government. However, no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar ground. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed W.P. No. 9008/92 that prior to filing of the W.P. the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in W.P. No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 77 to December, 78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become

difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the foodgrains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd. was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that

the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted, that, S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a W.P. No. 9008/92 seeking directions when the W.P. was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in W.P. No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri N. Nagaiiah examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyannagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex.

W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in W.P. No. 9008/92 dated 16-9-1997. Ex. W6 is the attendance register maintained by the FCI. He could get the copy of this from the RLC(C) which was filed by the FCI during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register, etc. during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in FCI and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any W.P. against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the FCI, Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the FCI used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. FCI has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the FCI. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79, it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the

said contractor. There is no practice of engaging casual labour for H&T works in FCI. He never worked during January, 77 to December, 78 as casual labour under FCI. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.T. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by FCI nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the FCI. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the ID. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October 77 to January, 78. Hence, in view of all this voluminous evidence the mere fact that these helpless illiterate persons

who were again working till 1984 under contractors after having worked with the FCI, who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However, the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in W.P. No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in FCI at any point of time. That it has come in the evidence that FCI used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The FCI has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief

what so ever. He relied on the following Judgments. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court—Deprives them remedy available to them in law—Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the FCI to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court

under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 77 to January, 78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Governmental Department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service

certificates. I am afraid that also will not do an good to petitioners and does not improve their case because the original certificate marked in L.C.I.D No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion petitioners have not proved by any reliable documentary evidence that they worked under the FCI even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the FCI. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for FCI no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of FCI asking them not to engage them. So it can safely be concluded that these persons did work for FCI although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the FCI. Seeing the evidence on record the exhibits it can safely be concluded that they did work for the FCI although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the FCI. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her, corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner	Witness examined for the Respondent
WW1 : Sri N. Nagaiah	MW1 : Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

Ex. W1	Conciliation order of ALC(C) dt. 10-9-93.
Ex. W2	Lr. of ALC(C) dt. 9-5-94.
Ex. W3	Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3.
Ex. W4	Union's representation dt. 16-8-93.
Ex. W5	Order in W.P. No. 9008/92 dt. 16-9-97.
Ex. W6	Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

Ex. M1	Copy of the tender and the contract dt. 1-3-74.
Ex. M2	Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
Ex. M3	Lr. from Govt. of India, Min. of Labour dt. 17-6-97.
Ex. M4	Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. आ. 896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 156/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एन-22025/1/2002-आई आर (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th February, 2002

S. O. 896.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 156/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19/02/2002.

[No. L-22025/1/2002-IR (C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT

Sri E. Ismail Presiding Officer

Dated : 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 156 of 2001
(ID No. 90/98 Transferred from Labour Court-III, Hyderabad)

BETWEEN

Sri Md. Yousuf Jani,

C/o. F. C. I.,

MRM Miryalaguda-508207.

..Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhawan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

..Respondents

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan

For the Respondent : Sri B.G. Ravindra Reddy

AWARD

This case I.D. No. 90/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India. Ministry of Labour's Order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 156/2001.

This is a case taken under Sec. 2A(2) of the I.D. Act. 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3.3.1995 between Sri U. Chinnappa and M/s. Cotto Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan., 1977 to 4th Dec., 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan., 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed W.P. No. 9008/92 that prior to filing of the W.P. the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in W.P. No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Resorting that he worked from January, 1977 to December, 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the foodgrains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd. was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a W.P. No. 9008/92 seeking directions when the W.P. was pending. Government of India passed an order dated 7-4-1993 rejecting their claim which reads as

thus, "The worker has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in W.P. No. 9008/02 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri Md. Yousaf Jani examined himself as MW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stock from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in W.P. No. 9008/92 dated 16-9-1997. Ex. W6 is the attendance register maintained by the FCI. He could get the copy of this from RLC(C) which was filed by the FCI during the conciliation

period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register, etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government corporation. He has not filed any document before the Court showing that he worked for two years from January, 1977 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in FCI and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any W.P. against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the FCI, Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the FCI used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the schedule rates fixed for H&T contracts depending on the work done by him. FCI has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the FCI. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in FCI. He never worked during January, 1977 to December, 1978 as casual labour under FCI. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers

Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by FCI nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the FCI. In the cross examination, he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any licence before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a Writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the FCI, who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute

was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MWI admitted in the cross examination he has not filed any licence of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in W.P. No. 28 of 1993 of the Hon'ble A.P. High Court wherein, the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore, prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also

relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec.25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Colleries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the central government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held; lapse of over 15 years in approaching the Court, Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble

High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal cum Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October '77 to January '78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec.9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 200(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-164 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. further (1977)4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said; lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-No. III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise all these petitioners filing writ in the Hon'ble High Court etc would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court, Transmit.

Dictated to Kum K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner :	Witness examine for the Respondent :
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WW1 : Md. Yousuf Jani	MW1 : Sri M. Siva Rama Krishna
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Documents marked for the Petitioner/Union

Ex.W1 : Conciliation order of ALC(C) dt. 10-9-93

Ex.W2 : Lr. Of ALC(C) dt. 9-5-94

Ex.W3 : Failure of Conciliation report of ALC(C) vide
Lr. No. 8(1) 1993-E3

Ex.W4 : Union's representation dt. 16-8-93

Ex.W5 : Order in WP No. 9008/92 dt. 16-9-97

Ex.W6 : Copy of the attendance register of Helpers &
Sweepers of FCI

Documents marked for the Respondent

Ex.M1 : Copy of the tender and the contract dt.1-3-74

Ex.M2 : Copy of the minutes of conciliation pro-
ceedings dt. 4-4-96 and failure report of
ALC(C)

Ex.M3 : Lr. From Govt. of India Min. of Labour
Dt.17-6-97

Ex.M4 : Notice under Arbitration Act and Arbitration
Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. आ. 897.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 159/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था ।

[सं. एन-22025/1/2002—आईआर(सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 897.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 159/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT AT HYDERABAD

PRESENT :

Shri E. Ismail.—Presiding Officer.

Dated :—31st December, 2001

Industrial Dispute L.C.I.D. No. 159 of 2001

(ID No. 93/98 Transferred from Labour Court-III,
Hyderabad)

BETWEEN :

Sri G. Maisaiah,
C/o F.C.I.

MRM Miryalaguda-508207.

. Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad2. The District Manager,
Food Corporation of India,
Nalgonda District.

. Respondents.

APPEARANCES :

For the Petitioner:—M/s. G. Ravi Mohan.

For the Respondent:—Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 96/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 159/2001. This is a case taken under Sec. 2A(2) of the ID Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are: That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan' 1977 to 4th Dec' 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were

terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan' 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However not action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sr. U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions.

Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside oral the termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefit and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the ID Act neither on law not on facts. The petitioner again approach the Labour Court under Sec. 2A (2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A (2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains a Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work

done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the Petitioner was one among them. The ALC(C) submitted his report the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri G. Maisaiah examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising

the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanager during conciliation. General Secretary Mr. Anjaih, obtained the attendance register from ALC(C) II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the central Govt. vide Ex. W3 Ex. W4 W is the Xerox copy of the service certificate of the petitioner for the period from 2-1-77 to 29-12-77. The petitioner further deposed that the original service certificate was deposited before the RLC(C) Ex.W5 is the attendance register Maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraihi and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union

was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex.W5 is forged and created. That they themselves filed original of Ex.W5 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-77 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex.M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex.M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex.M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex.W5 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these work-

men have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is on such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that order copy of that writ is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex.W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex.W2 is also served to the said effect. Ex.W3 is the failure report of the ALC(C). Ex.W5 is the xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61 where

it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said periods. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief whatsoever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to the file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) ILJ page 561 wherein the Lordships held

Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the central government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held: lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, '77 to 4th December, '78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal cum Labour Court. Accordingly, this case was filed on 11-3-98. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October '77 to January '78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in LCID No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evi-

dence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordship refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd and their workmen SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in case of LCID No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the FCI. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for FCI no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for

the FCI although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the FCI. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her, corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner	Witness examined for the Respondent
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WW1 : Sr. G. Maisaiah	MW1 : Sri M. Siva Rama Krishna
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Documents marked for the Petitioner/Union

Ex. W1	Conciliation order of ALC(C) dt. 10-9-93.
Ex. W2	Lr. of ALC(C) dt. 9-5-94.
Ex. W3	Failure of conciliation report of ALC(C) vide Ir. No. 8(1)1993-E3.
Ex. W4	Copy of service certificate dt. 29-12-77.
Ex. W5	Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

Ex. M1	Copy of the tender and the contract dt. 1-3-74.
Ex. M2	Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).

Ex. M3 Lr. from Govt. of India, Min. of Labour dt. 17-6-97.

Ex. M4 Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. आ. 898.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 160/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002—आई-आर-(सी-II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 898.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 160/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR (C-II)]

N. P. Kesavan, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present

Shri E. ISMAIL
Presiding Officer

Dated : 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 160 of 2001
(ID No. 94/98 Transferred from Labour Court-III, Hyderabad)

Between :

Sri Md. Subhani,
R/o. 7-4-186/15, Bangarugadda,
Nalgonda.

Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhawn,
Hyderabad

2. The District Manager,
Food Corporation of India,
Nalgonda District.

Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan
For the Respondent : Sri B. G. Ravindra Reddy

AWARD

This case I.D. No. 94/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 160/2001. This is a case taken under Sec. 2A(2) of the ID Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are: That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan' 1977 to 4th Dec' 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan, 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against

the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, '77 to December '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform: the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the ID Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A (2) of I.D. Act as it an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A (2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Peti-

tioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting there claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation hence there is no question of violation of Sec., 25 F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri Md. Subhani examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there was 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanager during the conciliation General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C) II subsequently their services were converted as if they were working with the contractors No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement matter was referred to the Central Govt. vide Ex. W3. Ex. 4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W6 is the service certificate issued by the Asstt. Manager (depot) dt. 2-12-77. The petitioner deposed that he worked as a daily rated casual helper to that effect he has produced

a copy of certificate marked as Ex. W6 wherein it is stated that the petitioner worked as a daily rated casual labour for the period from 7-12-76 to 2-12-77. Ex.W7 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a Central Government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiyah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex.W7 is forged and created. That they themselves filed original of Ex.W7 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-77 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He

can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex.M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex.M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex.M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex.W7 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before his Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W7 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex.W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex.W2 is also served to the said effect. Ex.W3 is the failure report of the ALC(C). Ex.W7 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence,

in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I. who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MWI admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgment in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the

petitioner is not entitled for any relief who so ever. He relied on the following Judgments. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to the file xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held; lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship

directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal cum Labour Court. Accordingly, this case was filed on 11-3-98. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October '77 to January '78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in case of LCID No. 164/2001 (ID No. 98/98) wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a government department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said: lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petition tried to distinguish between those who produced service certificates and those who did not produce service certificates. I

am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in case of LCID No. 164/2001 (ID No. 98/98) states that the petitioner worked only for three months two days, in other cases they are xerox copies without filing the original and as in some 4 or 5 cases J. Veera swamy's certificate is filed although he himself did not file his service certificate.

19 In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in the case, that is in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise all these petitioners filing writ in the Hon'ble High Court etc would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over that they say they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the director of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because they continued working under some contractors or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court, Transmit

Dictated to Kum K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner : Witness examined for the Respondent :

WW1 : Sri Md. Subhani MW1 : Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

Ex.W1 : Conciliation order of ALC(C) dt. 10-9-93

Ex.W2 : Lr. Of ALC(C) dt. 9-5-94

Ex.W3 : Failure of Conciliation report of ALC(C) vide Lr. No. 8(1) 1993-E3

Ex.W4 : Union's representation dt. 16-8-93

Ex.W5 : Order in WP No. 9008/92 dt. 16-9-97

Ex.W6 : Copy of service certificate dt. 2-12-77

Ex.W7 : Copy of the attendance register of Helpers & Sweepers of FCI

Documents marked for the Respondent

Ex.M1 : Copy of the tender and the contract dt. 1-3-74

Ex.M2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C)

Ex.M3 : Lr. From Govt. of India Min. of Labour Dt. 17-6-97

Ex.M4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. आ. 899.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध त्रियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 161/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आईआर (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 899.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 161/2001) of the Central Government Industrial Tribunal cum LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers

in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present

Shri E. ISMAIL

Presiding Officer

Dated :-31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 161 of 2001 (ID No. 95/98 Transferred from Labour Court-III Hyderabad)

BETWEEN :

Sri S. Mohan,
C/o. F.C.I.,

MRM Miryalaguda-508207

Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

Respondents

Appearances :

For the Petitioner : M/s. G. Ravi Mohan

For the Respondent : Sri B. G. Ravindra Reddy

AWARD

This case I. D. No. 85/98 is transferred from Labour Court-III, Hyderabad in view of the the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 161/2001. This is a case taken under Sec. 2A (2) of the I. D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W. P. No. 8395 of 1989 dated 3.8.1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are ; That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/ Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976.

Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan' 1977 to 4th Dec' 1978. The petitioner was directly under the control of the 2nd Respondent. The Petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan' 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC (C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC (C) but that ended in failure. Consequent on failure of the meetings ALC (C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC (C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC (C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioner's claim on the ground that there is no relationship of the employer and employee. The Honble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s.

Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A (2) of the I. D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that the worked from January, 77 to December '78 with R 2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I. D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advises of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I. D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I. D. Act neither on law nor on facts.

The petitioner again approached the Labour Court under Sec. 2A (2) of I. D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore, Sec. 2 A (2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A. P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner, as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC (C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sr N. Anajiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was

pending. Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus. "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A. P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F. Even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the grounds of delay and lapses. Hence, the petition may be dismissed.

14. Sri S. Mohan examined himself as WWI and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC (C)-II at Vidyanagar during conciliation. General Secretary Mr. Anajiah, obtained the attendance register from ALC (C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractor. They worked till 1984. They made a representation to the management for regularization of their services for which they were terminated from services. The union raised the industrial dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC (C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the order dated 16-9-1997, order in WP No. 9008/92 dated 16-9-1997.

Ex. W 5 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC (C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. Ex. W6 is the letter from ALC(C) to Sri N. Anjaiah dt. 29-5-89 and Ex. W7 is also the letter from ALC(C) to Sri N. Anjaiah dt. 5-4-89 regret letter regarding taking up of his case. Ex. W8 is the letter dt. 18-9-89 from ALC(C) to the Dist. Manager F.C.I. Miryaludga for his comments regarding representation of Sri N. Anjaiah Ex. W9 is the letter dt. 12-9-89 from Sri Samar Mukherjee, M.P. to the ALC(C) Ex. W10 is the copy failure of conciliation report dt. 15-1-93 In the cross-examination he deposed that the respondent corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeriah and Cherlapally Ram Murthy etc. It is true that ALC (C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC (C). He denied that Ex. W 5 is forged and created. That they themselves filed original of Ex. W 5 before the RLC (C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW 1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any

of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A. P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. He never worked during January 77 to December, 78 as casual labour under, F.C.I. Ex. M 1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A. P. Transport Workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC (C) submitted a failure report Ex. M 2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC (C). Ex. M 3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W 5 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workman have raised the dispute before the ALC (C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W 5 is filed before the RLC (C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec.9A of the I.D. Act. No notice of termination was given as

required under Sec. 25F or any wages paid. The petitioner has marked Ex.W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex.W2 is also served to the said effect. Ex.W3 is the failure report of the ALC(C). Ex.W5 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 1977 to January, 1978, Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No.28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination or service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was

engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief who so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to the file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Colleries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 200(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the central government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held; lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection whatsoever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal cum Labour Court. Accordingly this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October 1977 to January 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in LCID No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 where in their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services

of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said: lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in LCID No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the FCI even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (I.D. 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the FCI. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for FCI, no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of FCI asking them not to engage them. So it can safely be concluded that these persons did work for FCI although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the FCI. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the FCI although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the FCI. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her, corrected by me on this the 31st day of December, 2001.

F. ISMAIL, Presiding Officer

Appendix of Evidence

Witness examined for the Petitioner :	Witness examined for the Respondent :
WW1 : Sri S. Mohan	MW1 : Sri M. Siva Rama Krishna
Documents marked for the Petitioner/Union	
Ex. W1	Conciliation order of ALC(C) dt. 10-9-93.
Ex. W2	Lr. of ALC(C) dt. 9-5-94.
Ex. W3	Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3.
Ex. W4	Order in W.P. No. 9008/92 dt. 16-9-97.
Ex. W5	Copy of the attendance register of Helpers & Sweepers of FCI.
Ex. W6	Lr. from ALC(C) N. to Anjaiah pt. 29.5-99
Ex. W7	Lr. from ALC(C) to Anjaiah dt. 5-4-89
Ex. W8	Lr. from ALC(C) to the Dist. Manager FCI dt. 18-9-89
Ex. W9	Lr. from M.P. to the ALC(C) dt. 12-9-89
Ex. W10	Failure of conciliation report of ALC(C) vide Lr. No. 8(2)/90-E3 dt. 15-1-93

Documents marked for the Respondent

Ex. M1	Copy of the tender and the contract dt. 1-3-74.
Ex. M2	Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
Ex. M3	Lr. from Govt. of India, Min. of Labour dt. 17-6-97.
Ex. M4	Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का.अ. 900.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 162/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई.आर. (पी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 900.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 162/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No. 162 of 2001

(ID No. 96/98 Transferred from Labour Court-III,
Hyderabad)

BETWEEN

Sri Ch. Yadaiah,
C/o F.C.I.,
MRM Miryalaguda-508207.

... Petitioner.

AND

1 The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

... Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 96/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11020/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 162/2001. This is a case taken under Section 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are: That the Respondent, Food Corporation of India, established MKM Milling Operations, Depots/Godown in 1970 carrying on milling operations. Initially the petitioner was engaged as contract worker in the year 1970 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January, 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from January, 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed, to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Government passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing

upon the Judgment of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALI Page 550 directed the three petitioners to approach the Hon'ble Labour Court under Section 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 1977 to December, 1978 with K2 without any break in service the petitioner repeated that after exhausting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Section 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated in spite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eek out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petitioner is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Section 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at

Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-3-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 15-3-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veerawamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri Ch. Yadeiah examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid

monthly wages. The corporation submitted register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Gov. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WF No. 9008/92 dated 16-9-1997. Ex. W7 is the service certificate issued by the Asstt. Manager (depot) dt. 7-1-78. The petitioner deposed that he worked as a daily rated casual helper to that effect he has produced a copy of certificate marked as Ex. W7 wherein it is stated that the petitioner worked as a daily rated casual labour for the period from 1-3-76 to 31-12-77. Ex. W6 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeriah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 i.e. worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the

scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A. P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That Sri V. Venkateswarlu N Anjaiah and J. Veera Swamy filed a writ N 9008197. It is incorrect that Ex. W6 is filed before the ALC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 1977 to January, 1978. Hence in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with

the F.C.I. who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MWI admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001-LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service. That Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief whatsoever. He relied on the following Judgements: 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wages disengagement after completion of work have no

right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamdi Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court—Deprives them remedy available to them in law—loses their rights as well. So he submits that in lieu of this clear rulings the petitioner even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 13 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection whatsoever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Section 2A(2) of A. P. State Amendment under Industrial Disputes Act 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Section 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgment held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in case of LCID No. 164/2001 (ID No. 98/98) wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the

Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalmar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in case of LCID No. 164/2001 (ID No. 98/98) states that the petitioner worked only for three months two days, in other cases they are Xerox copies without filing the original and as in some 4 or 5 cases I Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in the case, that is in LCID No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularisation of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on

daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner : Witness examined for the Respondent :

WW1 : Sri Ch. Yadaiah MW1 : Sri M. Siva Rama Krishna
Documents marked for the Petitioner/Union

Ex. W1 : Conciliation order of ALC(C) dt. 10-9-93.

Ex. W2 : Lr. of ALC(C) dt. 9-5-94.

Ex. W3 : Failure of conciliation report of ALC(C) vide Lr. No. 8(1) 1993-E3.

Ex. W4 : Union's representation dt. 16-8-93.

Ex. W5 : Order in WP No. 9008/92 dt. 16-9-97.

Ex. W6 : Copy of the attendance register of Helpers & Sweepers of FCI.

Ex. W7 : Copy of service certificate dt. 7-1-78.

Documents marked for the Respondent

Ex. M1 : Copy of the tender and the contract dt. 1-3-74.

Ex. M2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).

Ex. M3 : Lr. from Government of India, Ministry of Labour dt. 17-6-97.

Ex. M4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, १९ फरवरी, २००२

का.अ. ९०१.—औद्योगिक विवाद अधिनियम, १९४७ (१९४७ का १४) की धारा १७ के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या १८३/२००१) को प्रकाशित करती है, जो केन्द्रीय सरकार को १९/०२/२००२ को प्राप्त हुआ था।

[सं. एल.-२२०२५/१/२००२-आई.आर. (सी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 901.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 83/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No. 183 of 2001

(ID No. 82/99 Transferred from Labour Court-III,
Hyderabad)

BETWEEN

Sri J. Veera Swamy,
C/o 16-9-749/41/1,
Old Malakpet,
Hyderabad-36.

... Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

... Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This is a transfer case with I.D. No. 82/99 transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11026/1/ 2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 183/2001. This is a case taken under Section 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are: That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in October, 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January, 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his regular

as casual labour with effect from January, 1977 till December, 1978 in spite of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed, to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) the Petitioner filed WP No. 9008/92 that prior to filing of the WP the Central Government passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgment of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the petitioner to approach the Hon'ble Labour Court under Section 2A(2) of the I.D. Act. Hence, the petitioner is constrained to approach the Hon'ble Court for necessary relief.

5. Retreating that he worked from January, 1977 to December, 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Section 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advised of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated in spite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petitioner is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Section 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri. V. Satvanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, V. Venkateswarlu and the petitioner filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri Veera Swamy examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W7 order in WP No. 9008/92 dated 16-9-1997. Ex. W6 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the cor-

poration. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C). He deposed that he has submitted R2 his service certificate that he worked for the period from 1-3-96 to 31-12-97 and the original certificate has been deposited before the RLC(C), Hyderabad but no xerox copy has been filed and marked as exhibit.

15. Sri Sivaram Krishna, the Asst. manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the

other works were carried through contractor. They have not tied any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner in one such. That this petitioner, Anjaiah and Venkateswarlu filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the ALC(C). He denied that he is entitled for any relief.

10. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W4 is a letter addressed by Anjaiah dated 16-8-93. Ex. W5 is the Judgement of the Hon'ble High Court wherein petitioner is a party along with Anjaiah and Venkateswarlu wherein the Hon'ble High Court directed that in view of U. Chinnappa Vs. Cotton Corporation of India Judgement they can approach the Labour Court straight away without seeking reference. Ex. W6 is the xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month of October, 77. Hence, in view of all this voluminous evidence the mere fact that these helpless, illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and

25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1999 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy avail-

able to them in law—loses their rights as well. So he submits that in lieu of this clear rulings the petitioner even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection whatsoever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Section 2A(2) of A. P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Section 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly, these cases were filed on 17-3-1999. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in LCID No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish

between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in LCID No. 164/2001 states that the petitioner worked only for three months two days, in other cases they are Xerox copies without filing the original and as in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and moreover they say that they worked till 1984 under various contractors that they made a representation to the management for regularisation of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractors or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labourers from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner :	Witness examined for the Respondent :
WW1 : Sri J. Veera Swamy	MW1 : Sri M. Siva Rama Krishna
Documents marked for the Petitioner/Union	
Ex. W1 : Conciliation order of ALC(C) dt. 10-9-93.	
Ex. W2 : Lr. of ALC(C) dt. 9-5-94.	
Ex. W3 : Failure of conciliation report of ALC(C) vide Lr. No. 8(1) 1993-E3.	
Ex. W4 : Union's representation dt. 16-8-93.	
Ex. W5 : Order in WP No. 9008/92 dt. 16-9-97.	
Ex. W6 : Copy of the attendance register of Helpers & Sweepers of FCI.	

Documents marked for the Respondent

- Ex. M1 : Copy of the tender and the contract dt. 1-3-74.
- Ex. M2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
- Ex. M3 : Lr. from Government of India, Ministry of Labour dt. 17-6-97.
- Ex. M4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का प्र. 902.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एक.सी.आर. के प्रवक्तृ के समक्ष नियोजकों और उनके कर्मचारों के बीच, प्रमुख में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पत्राट (सदर्थ सख्या 184/2001) को प्रकाशित करती है, जो केन्द्रिय सरकार को 19-02-2002 को प्राप्त हुआ था।

[अ एन.-22025/1/2002-आर.आर. (सी -II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 184/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desl. Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No. 184 of 2001

(ID No. 96/98 transferred from Labour Court-III,
Hyderabad)

BETWEEN

Sri Md. Jaffer,
R/o Sitharampur,
Mirylaguda-508207.

.. Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

... Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 227/99 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's Order No H-11026/1

2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 184/2001. This is a case taken under Section 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 6395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are ; That the Respondent, Food Corporation of India, established M&M Mining Operations/Depots/Godown in 1970 carrying on Mining Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January, 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from January, 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed, to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the said award on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S' Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Government passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgment of between Sri U. Chinnappa and M/s. Cotton Corporation of India, and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Section 2A(2) of the I.D. Act. Hence, the

petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 1977 to December, 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Section 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advised of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petitioner is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore, Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice mills established all over the country. Initially Rice Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent filed to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T

contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri. V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri Md. Jaffer examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidvanagar during conciliation General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their

services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W7 is the copy of service certificate issued by the Asst. Manager (depot) dt. 7-1-78. The petitioner deposed that he worked as a daily rated casual helper to that effect he has produced an original certificate marked as Ex. W7 wherein it is stated that Sri J. Veera Swamy worked as a daily rated casual labour for the period from 1-3-76 to 31-12-77. Ex. W6 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cheral Pillay Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by

any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said referred petitioner in one such. That S/Shri V. Venkateswarlu, N. Aniaiah and J. Veera Swamy filed a writ N 9008/92. It is incorrect that Ex. W6 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the ID Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Aniaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than

250 workmen, the petitioner was among those 250 workmen. The petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence. It is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewed and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such

an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as bacli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So submits that in lieu of this clear rulings the petitioner even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Section 2A(2) of A. P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Section 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in case of LCID No. 164/2001 (ID No. 98/98) wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it

improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in this case states that the petitioner worked only for three months two days, in other cases they are Xerox copies without filing the original and as in some 4 or 5 cases J. Veeraswamy's certificate is filed including in this case although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in the case, that is in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularisation of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh

casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the	Witness examined for the
Petitioner :	Respondent :
WW1 : Sri Md. Jaffer MW1 : Sri M Siva Rama Krishna Documents marked for the Petitioner/Union	
Ex. W1 : Conciliation order of ALC(C) dt. 10-9-93.	
Ex. W2 : Lr. of ALC(C) dt. 9-5-94.	
Ex. W3 : Failure of conciliation report of ALC(C) vide Lr. No. 8(1) 1993-E3.	
Ex. W4 : Union's representation dt. 16-8-93.	
Ex. W5 : Order in WP No. 9008/92 dt. 16-9-97.	
Ex. W6 : Copy of the attendance register of Helpers & Sweepers of FCI.	
Ex. W7 : Copy of service certificate dt. 7-1-78. Documents marked for the Respondent	
Ex. M1 : Copy of the tender and the contract dt. 1-3-74.	
Ex. M2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).	
Ex. M3 : Lr. from Government of India, Ministry of Labour dt. 17-6-97.	
Ex. M4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89.	

नई दिल्ली, 19 फरवरी, 2002

का.आ. 903.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, प्रमुखता में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 185/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई.आर. (सी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 185/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated, 31st December, 2001

Industrial Dispute L.C.I.D. No. 185 of 2001

(ID No. 228/99 Transferred from Labour Court-III,
Hyderabad)

BETWEEN

Smt. R. Narayanamma,
R/o 34-227, Bapujinagar (FCI),
Miryalaguda, Nalgonda Distt.

Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.
2. The District Manager,
Food Corporation of India,
Nalgonda District. ... Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 228/99 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 185/2001. This is a case taken under Section 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 Carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. She worked from January 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination peti-

tioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. She worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of her tenure as casual labour with effect from January, 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence the action of the Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also, the petitioner made several representations to ALC(C) to send the dispute to the Government. However, no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP, the Central Government passed an order dated 13th May, 1993 rejecting the petitioner's claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALL Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Section 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court for necessary relief.

5. Retreating that she worked from January, 1977 to December, 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed her at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Section 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advised of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision

under Section 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated in spite of her having made oral representations to the Respondent to reinstate her, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination, it has become difficult for her to eak out her livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Section 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Section 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-71. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and she was paid as per the scheduled rates fixed under the H & T contract depending on the work done by her. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A. P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11th November, 1979. The Respondent has no knowledge as to the service put in by the petitioner as she was never engaged as casual labour at any point of time. Therefore, the allegation that she was engaged as casual

labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Shri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Government has decided not to refer the above dispute for adjudication". The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Section 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Smt. R. Narayanamma examined herself as WW1 and deposed facts stated in the petition in the chief examination and added that she was supervising the stocks from insects by applying pesticides. Along with her there were 30 to 50 casual workers at Miryalaguda. That she used to be paid monthly salary. She worked continuously for two years. The respondent used to maintain attendance register and wages register and she used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularisation of their services for which they were all terminated from services. The union raised the said dispute wherein her claim was also included vide Ex. W1 dated 1-9-93. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement matter was referred to the Central Government vide Ex. W3. Ex. W4 is the representation made by the union to

the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W7 is the copy of service certificate for the period from 1-3-1976 to 31-12-1977 issued by the Asstt. Manager (Depot) dated 7-1-78. WW1 deposed that she filed the original service certificate before the RLC(C), but, actually Ex. W7 is the copy of service certificate of Sri J. Veera Swamy. Ex. W6 is the copy of attendance register maintained by the F.C.I. She could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination, she deposed that the respondent corporation is a Central Government corporation. She has not filed any document before the Court showing that she worked for two years from January, 1977 continuously under the respondent. She denied that there is no practice of engaging casual labourers directly by the corporation. It is true that she filed the present case after 20 years. She has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. She denied that only contractors used to pay her. She admitted that she did not file any document showing that she received any amount from the corporation. After 1978 she worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). She denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A. P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. She never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A. P. Transport workers

Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that she is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Section 9A of the I. D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all

back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A. P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) (1) Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain Xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a Government department therefore is not a retrenchment. Further held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee Contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment ex-

change. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Losses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-83 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but three among these workmen approached the High Court and got the order. Wherein his Lordship directed those petitioners to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is essented by the President of India, therefore direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is proscribed under the I.D. Act. but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned

Counsel for the respondent have referred to 2000 (1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and like including this case in some other 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977

and she shall be given preference over others in the matter of employment of casual labour even though on daily wages taking her seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the
Petitioner :

Witness examined for the

Respondent :

WW1.—Smt. R. Narayanamma.

MW1 —Sri M. Siva Rama Krishna.

Documents marked for the Petitioner|Union

Ex. W1—Conciliation order of ALC(C) dated 10-9-93.

Ex. W2.—Lr. Of ALC(C) dated 9-5-94.

Ex. W3—Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3.

Ex. W4—Union's representation dt. 16-8-93.

Ex. W5—Order in WP No. 9008/92 dated 16-9-97.

Ex. W6—Copy of the attendance register of Helpers and Sweepers of FCI.

Ex. W7—Copy of service certificate dated 7-1-78.

Documents marked for the Respondent

Ex. M1—Copy of the tender and the contract dated 1-3-74.

Ex. M2—Copy of the minutes of conciliation proceedings dated 4-4-96 and failure report of ALC(C).

Ex. M3—Lr. From Government of India, Ministry of Labour dated 17-6-97.

Ex. M4—Notice under Arbitration Act and Arbitration Award dated 25-1-89.

नई दिल्ली, १९ फरवरी, २००२

का. आ. १०४.—औद्योगिक विवाद अधिनियम, १९४७ (१९४७ का १४) की धारा १७ के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाद

(संदर्भ संख्या 186/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई.आर. (सी.-II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 904.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 186/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No. 186 of 2001

(ID No. 229/99 Transferred from Labour Court-III,
Hyderabad)

BETWEEN :

Smt. P. Venkatanarasamma,
C/o. 16-9/179/41/1,
Old Malakpet, Hyderabad-36.

..Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhawan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

..Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 229/99 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 186/2001.

This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established M&M Milling Operations|Depots|Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. She worked from January 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. She worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of her tenure as casual labour with effect from January 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also, the petitioner made several representations to ALC(C) to send the dispute to the Government. However, no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri. V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Cental Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employees. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also

constrained to approach the Hon'ble Court for necessary relief.

5. Retreating that she worked from January, 1977 to December, 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed her at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of her having made oral representations to the Respondent to reinstate her, the Respondent ignored her same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for her to eak out her livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the

same and she was paid as per the scheduled rates fixed under the H&T contract depending on the work done by her. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-79. The Respondent has no knowledge as to the service put in by the petitioner as she was never engaged as casual labour at any point of time. Therefore, the allegation that she was engaged as casual labour by the FCI from 1-1-1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Smt. P. Venkatanarasamma examined herself as WW1 and deposed facts stated in the petition in the chief examination and added that she was supervising the stocks from insects by applying pesticides. Along with her there were 30 to 50 casual workers at Miryalaguda. That she used to be paid monthly salary. She worked continuously for two years. The respondent used to maintain attendance register and wages register and she used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted atten-

dance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein her claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the copy of service certificate for the period from 1-3-1976 to 31-12-1977 issued by the Asstt. Manager (Depot) dated 7-1-1978. WW1 deposed that she filed the original service certificate before the RLC(C), but, actually it is the copy of service certificate of Sri J. Veera Swamy. Ex. W6 is the attendance register maintained by the F.C.I. Ex. W7 is the order in WP No. 9008/92 dated 16-9-1997. She could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination, she deposed that the respondent corporation is a Central Government corporation. She has not filed any document before the Court showing that she worked for 2 years from January, 1977 continuously under the respondent. She denied that there is no practice of engaging casual labourers directly by the corporation. It is true that she filed the present case after 20 years. She has not filed any representation or letter addressed to the Respondent corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. She denied that only contractors used to pay her. She admitted that she did not file any document showing that she received any amount from the corporation. After 1978 she worked under the contractors namely, S/Sri. V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). She denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-77 to June, 1991, he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the

F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-77 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He cannot say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. She never worked during January, 1977 to December, 1978 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such The S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that she is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuously service with the Corporation from January, 1977 to 4th December, 1978. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 1977 to January, 1978. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250

workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. The MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during he said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain Xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the

petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the central government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but three among these workmen approached the High Court and got the order. Wherein his Lordship directed those petitioners to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October '77 to January '78 that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificate produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act,

but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on *Shahmar Works Ltd. and their workmen* SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 1 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and like in this case in some other 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and she shall be given preference over others in the matter of employment of casual labour even though on daily wages taking her seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Witness examined

Petitioner : for the Respondent:

WW1 : Smt. P. Venkatanarasamma

MW1 : Sri. M. Siva Rama Krishna

Documents marked for the Petitioner/Union

Ex. W1 : Conciliation order of ALC (C) dt. 10-9-93.

Ex. W2 : Lr. OF ALC(C) dt. 9-5-94.

Ex. W3 : Failure of conciliation report of ALC(C) vide Lr. No. 8(1) 1993-E3.

Ex. W4 : Union's representation dt. 16-8-93.

Ex. W5 : Copy of service certificate dt. 7-1-78.

Ex. W6 : Copy of the attendance register of Helpers & Sweepers of FCI.

Ex. W7 : Orders in WP No. 9008/92 dt. 16-9-97.

Documents marked for the Respondent

Ex. M1 : Copy of the tender and the contract dt. 1-3-74.

Ex. M2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).

Ex. M3 : Lr. From Govt. of India, Min. of Labour Dt. 17-6-97.

Ex. M4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. अ. 905.--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्न औद्योगिक

विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 187/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई. आर. (सी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 905.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 187/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No. 187 of 2001

(ID No. 230/99 Transferred from Labour Court-III,
Hyderabad)

BETWEEN :

Sri K. Narasimha Reddy,
C/o. F.C.I.,
MRM Miryalaguda-508201.

Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.
2. The District Manager,
Food Corporation of India,
Nalgonda District. . . Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : M/s. B. G. Ravindra Reddy.

AWARD

This case I.D. No. 230/99 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dtd. 18-10-2001 and renumbered in this Court as L.C.I.D. 187/2001. This is a

case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgement of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri. U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations|Depots|Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from January 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri. V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri. U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT page 556 directed the three petitioners to approach the Hon'ble Labour Court under S. 2A(2) of the ID Act. Hence

the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 1977 to December 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions or principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eek out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda, on tender basis. The contractor used to bring his own labour for the same and he was paid as per

the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1-1-1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-96. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus. "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri K. Narasimha Reddy examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation General Secretary Mr. Anjaiah obtained

the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Govt. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W6 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc. during the conciliation period. In the cross examination he deposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeriah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed against original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna the Asstt. Manager Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He cannot say whether the petitioner was employed by the said con-

tractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractors and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This

shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgment in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of foodgrains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissal. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgments 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same Court rejecting permission to file xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment. their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Sigareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without

their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec.10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the central government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that the case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal cum Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgment held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October '77 to January '78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred

to 2000(1) LLJ page 561 Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. 164/2001 (ID 98/98 of Labour Court No. III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 604 GI/2002-37

1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the	Witness examined for
Petitioner:	the Respondent:
NIL	NIL

Documents marked for the Petitioner/Union

- Ex. W1 : Conciliation order of ALC(C) dt. 10-9-93.
- Ex. W2 : Lr Of ALC(C) dt. 9-5-94.
- Ex. W3 : Failure of conciliation report of ALC(C) vide Lr No 8(1)1993-E3.
- Ex. W4 : Union's representation dt. 16-8-93
- Ex. W5 : Order in WP No. 9008/92 dt. 16-9-97.
- Ex. W6 : Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

- Ex. M1 : Copy of the tender and the contract dt. 1-3-74.
- Ex. M2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
- Ex. M3 : Lr. From Govt. of India, Min. of Labour Dt. 17-6-97.
- Ex. M4 : Notice under Arbitration Act and arbitration Award dt 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का.आ. 906.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 166/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं.एल.-22025/1/2002-आ.आर (सी II)]

एन.पी. के.एन, डैस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 166/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their

workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No. 166 of 2001

(ID No. 100/98 Transferred from Labour Court-III,
Hyderabad)

BETWEEN

Smt. Mariyamma,
C/o FCI,
MRM Miryalaguda-508207,
Nalgonda District.

Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.
2. The District Manager,
Food Corporation of India,
Nalgonda District. . . Respondents.

APPEARANCES :

For the Petitioner.—M/s. G. Ravi Mohan.

For the Respondent.—M/s. B. G. Ravindra
Reddy.

AWARD

This case I.D. No. 100/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 166/2001. This is a case taken under Section 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager,

Food Corporation of India, Nalgonda District. She worked from January, 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. She worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of her tenure as casual labour with effect from January, 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also, the petitioner made several representations to ALC(C) to send the dispute to the Government. However, no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Government passed an order dated 13th May, 1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Section 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that she worked from January, 1977 to December, 1978 with R2 without any break in service the petition repeated that after extracting work from petitioner as casual labour placed her at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Section 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Section 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of her having made oral representations to the Respondent to reinstate her, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for her to eak out her livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Section 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Section 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28th May, 1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the foodgrains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and she was paid as per the scheduled rates fixed under the H&T contract depending on the work done by her. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A. P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in

by the petitioner as she was never engaged as casual labour at any point of time. Therefore, the allegation that she was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Government has decided not to refer the above dispute for adjudication". The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Section 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Smt. Mariamma examined herself as WW1 and deposed facts stated in the petition in the chief examination and added that she was supervising the stocks from insects by applying pesticides. Along with her there were 30 to 50 casual workers at Miryalaguda. That she used to be paid monthly salary. She worked continuously for two years. The respondent used to maintain attendance register and wages register and she used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein her claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Government vide Ex. W3. Ex. W4 is the

representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16th September, 1997. Ex. W6 is the attendance register maintained by the F.C.I. She could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination, she deposed that the respondent corporation is a central government corporation. She has not filed any document before the Court showing that she worked for two years from January, 1977 continuously under the respondent. She denied that there is no practice of engaging casual labourers directly by the corporation. It is true that she filed the present case after 20 years. She has not filed any representation or letter addressed to the Respondent corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. She denied that only contractors used to pay her. She admitted that she did not file any document showing that she received any amount from the corporation. After 1978 she worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). She denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the district office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-1974 to 14-5-1977 the contract was given to A. P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F. C. I. She never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A. P. Transport Workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C)

submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the I.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S Sri V. Venkateswarlu, N. Anjaiah and J. Veeraswamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that she is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I. D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 77 to January, 78. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However, the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and others centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgment in WP No. 28 of 1993 of the Hon'ble A. P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of

service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absence workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore, prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain Xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore, is not a retrenchment. Further held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right, to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be

exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegations is that the petitioner in this case and 43 other cases worked from January, 77 to 4th December, 78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but three among these workmen approached the High Court and got the order. Wherein his Lordship directed those petitioners to approach the Labour Court under Sec. 2A(2) of A. P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore, direct applications can be entertained by The Central Government Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I. D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services

of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and she shall be given preference over others in the matter of employment of casual labour even though on daily wages taking her seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the
Petitioner :

WW1.—Smt. Mariyamma.

Witness examined for the
Respondent :

MW1.—Sri M. Siva Rama Krishna.

Documents marked for the Petitioner/Union

Ex. W1—Conciliation Order of ALC(C) dated 10-9-93.

Ex. W2—Lr. Of ALC(C) dated 9-5-94.

Ex. W3—Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3.

Ex. W4—Union's representation dated 16-8-93.

Ex. W5—Order in WP No. 9008/92 dated 16-9-97.

Ex. W6—Copy of the attendance register of Helpers and Sweepers of FCI.

Documents marked for the Respondent

Ex. M1—Copy of the tender and the contract dated 1-3-74

Ex. M2—Copy of the minutes of conciliation proceedings dated 4-4-96 and failure report of ALC(C).

Ex. M3—Lr. From Government of India, Min. of Labour dated 17-6-97.

Ex. M4—Notice under Arbitration Act and Arbitration Award dated 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का.आ. 907.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 169/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं.एन.-22025/1/2002-आई.आर. (सो., II)]

एन.पी. केशवन, डैन्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 907.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.

169/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employes in relation to the management of FCI and their workman which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated :—31st December, 2001

Industrial Dispute L.C.I.D. No. 169 of 2001

(ID No. 209/98 Transferred from Labour Court-III,
Hyderabad)

BETWEEN

Sri N. Satyanarayana,
R/o 7-4-186/15, Bangarugadda,
Nalgonda.

Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.
2. The District Manager,
Food Corporation of India,
Nalgonda District. . . Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 209/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and re-numbered in this Court as L.C.I.D. No. 169/2001. This is a case taken under Section 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors.

Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January, 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from January, 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Government passed an order dated 13th May, 1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Section 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 1977 to December, 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Section 9A of the I.D. Act since it related to change of service conditions.

Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Section 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated in spite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Section 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corportion of India at any point of time Therefore Section 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be enagged for his work. The FCI has nothing to do with those matters. The corportation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A. P. Transport Workers Co-opertive Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979.

The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was reltaionsip of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veera swamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending. Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Government has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Section 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri N. Satyanarayana examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated

1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Government vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W6 is the service certificate issued by the Asstt. Manager (depot) dated 2-12-77. The petitioner deposed that he worked as a daily rated casual helper to that effect he has produced a copy of certificate marked as Ex. W6 wherein it is stated that the petitioner worked as a daily rated casual labour for the period from 1-9-77 to 2-12-77. Ex. W7 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent corporation is a Central Government corporation. He has not filed any document before the Court showing that he worked for two years from January, 1977 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W7 is forged and created. That they themselves filed original of Ex. W7 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District Office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He cannot say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. He never worked during January, 1977 to December, 1978 as casual labour

under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W7 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkatswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W7 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 1977 to 4th December, 1978. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Section 9A of the I.D. Act. No notice of termination was given as required under Section 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W7 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 1977 to January, 1978. Hence in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with

all back wages etc. The petitioner relied on a Judgment in WP No. 28 of 1993 of the Hon'ble A. P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a Government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wages disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also

relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A. P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in case of LCID No. 164/2001 (ID No. 98/98) wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works

Ltd. and their workmen SCLF 1950—83 page 152--64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in case of LCID No. 164/2001 (ID No. 98/98) states that the petitioner worked only for three months two days, in other cases they are Xerox copies without filing the original and as in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in the case, that is in L.C.I.D. No. 164/2001 (ID 98/98) of Labour Court-III it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the directing of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent, which shows that, they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District.

However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the

Petitioner :

WW1—Sri N. Satyanarayana.

Witness examined for the

Respondent :

MW1—Sri M. Siva Rama Krishna.

Documents marked for the Petitioner/Union

Ex. W1—Conciliation order of ALC(C) dated 10-9-93.

Ex. W2—Lr. Of ALC(C) dated 9-5-94.

Ex. W3—Failure of conciliation report of ALC (C) vide Lr. No. 8(1)1993-E3.

Ex. W4—Union's representation dated 16-8-93.

Ex. W5—Order in WP No. 9008/92 dated 16-9-97.

Ex. W6—Copy of service certificate dated 2-12-77.

Ex. W7—Copy of the attendance register of Helpers and Sweepers of FCI.

Documents marked for the Respondent

Ex. M1—Copy of the tender and the contract dated 1-3-74.

Ex. M2—Copy of the minutes of conciliation proceedings dated 4-4-96 and failure report of ALC(C).

Ex. M3—Lr. From Government of India, Min. of Labour dated 17-6-97.

Ex. M4—Notice under Arbitration Act and Arbitration Award dated 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का.अ. 908.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद

के पंचाट (संरक्ष संख्या 170/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/02/2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई.आर. (सी. II)]

एन.पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 908.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 170/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, AT HYDERABAD

PRESENT :

Shri E. Ismail, Presiding Officer.

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No. 170 of 2001

(ID No. 210/98 Transferred from Labour Court-III,
Hyderabad)

BETWEEN :

Sri R. John Paul,
C/o 16-9-749/41,
Race Course Road, Malakpet,
Hyderabad.

...Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.

2. The District Manager,
Food Corporation of India,
Nalgonda District.

... Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra
Reddy.

AWARD

This case I.D. No. 210/98 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and

renumbered in this Court as L.C.I.D. No. 170/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8595 of 1989 dated 3-8-1995 between Sri. U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MKM Mining Operations (Depots) Godown in 1970 carrying on Mining Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January 1977 to 4th December 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from January 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Government passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page

556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Recreating that he worked from January, 1977 to December 1978 with K2 without any break in service the petitioner repeated that after extracing work from petitioner as casual labour placed him at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advise of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without employing with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled and was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern

Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the schedule rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri. V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WF was pending Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri R. John Paul examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Alongwith him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment

letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidayanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the central Govt. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-97. Ex. W6 is the copy of service certificate issued by the Asst. Manager, F.C.I., MRM Miryalaguda dt. 29-12-77. He deposed that he has submitted R2 his service certificate that he worked for the period from 2-1-77 to 29-12-1977 and the original certificate has been deposited before the RLC(C), Hyderabad. Ex. W7 is the attendance register maintained by the F.C.I. He could not get the copy of this from the RLC(C) which was filed by the F.C.I. during the conclusion period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross examination I disposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any W.P. against the said proceedings of ALC(C). He denied that Ex. W7 is forged and created. That they themselves filed original of Ex. W7 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District Office of the F.C.I. Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the F.C.I. used to award H & T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-1974 to 14-5-1977 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77

to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. He never worked during January, 1977 to December, 1978 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H & T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W7 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 1977 to 4th December, 1978. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Section 9A of the I.D. Act. No notice of termination was given as required under Section 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W7 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 1977 to January, 1978. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Section 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955, wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Section 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transporting of good grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor.

The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission of file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Section 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wages disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000 (1) I.J.J page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held: lapse of over 15 years in approaching the Court-Denies them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Section 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Section 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October 1977 to January 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Section 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in

evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quiet till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said: lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificate and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days. the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour (Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner : Witness examined for the Respondent :

WW1 : Sri R. John Paul MW1 : Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

- Ex. W1 : Conciliation order of ALC(C) dt. 10-9-93
 Ex. W2 : Lr. of ALC(C) dt. 9-5-94.
 Ex. W3 : Failure of conciliation report of ALC(C) vide Lr. No. 8(1) 1993-E3.
 Ex. W4 : Union's representation dt. 16-8-93.
 Ex. W5 : Order in WP No. 9008/92 dt. 16-9-97.
 Ex. W6 : Copy of Service certificate dt. 29-12-77.
 Ex. W7 : Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

- Ex. M1 : Copy of the tender and the contract dt. 1-3-74.
 Ex. M2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).
 Ex. M3 : Lr. from Government of India, Ministry of Labour dt. 17-6-97.
 Ex. M4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का.आ. 909:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रवन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निम्नित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 179/2001) को प्रकाशित करती करने है, जो केन्द्रीय सरकार को 19/02/2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई. आर. (सी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 909.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 179/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD
 PRESENT :

Shri E. Ismail, Presiding Officer.

Dated : 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. NO. 179 OF 2001

(ID No. 72/99 Transferred from Labour Court-III, Hyderabad)

BETWEEN

Smt. Sultan Bee,
R/o Opp. F.C.I.

.... Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.
2. The District Manager,
Food Corporation of India,
Nalgonda District.

... Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 72/99 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 179/2001. This is a case taken under Section 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. She worked from January, 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. She worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of her tenure as casual labour with effect from January, 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also, the petitioner made several representations to ALC(C) to send the dispute to the Government. However, no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Aniaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Government passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Section 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court for necessary relief.

5. Retreating that she worked from January, 1977 to December, 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed her at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Section 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Section 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of her having made oral representations to the Respondent to reinstate her, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for her to eak out her livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Section 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Section 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the foodgrains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and she was paid as per the scheduled rates fixed under the H&T contract depending on the work done by her. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satvanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as she was never engaged as casual labour at any point of time. Therefore, the allegation that she was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkaeswaru filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Government has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Section 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petitioner is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Smt. Sultan Bee examined herself as WW1 and deposed facts stated in the petition in the chief examination and added that she was supervising the stocks from insects by applying pesticides. Along with her there were 30 to 50 casual workers at Miryalaguda. That she used to be paid monthly salary. She worked continuously for two years. The respondent used to maintain attendance register and wages register and she used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein her claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Government vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W7 is the copy of service certificate for the period from 1-3-1976 to 31-12-1977 issued by the Asst. Manager (Depot) dated 7-1-1978. WW1 deposed that she filed the original service certificate before the RLC(C), but, actually Ex. W7 is the copy of service certificate of Sri J. Veeraswamy. Ex. W6 is the copy of attendance register maintained by the F.C.I. She could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination, she deposed that the respondent corporation is a Central Government Corporation. She has not filed any document before the Court showing that she worked for two years from January, 1977 continuously under the respondent. She denied that there is no practice of engaging casual labourers directly by the corporation. It is true that she filed the present case after 20 years. She has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. She denied that only contractors used to pay her. She admitted that she did not file any document showing that she received any amount from the corporation. After 1978 she worked under the contractors namely, S/Sri V. Satvanarayana Reddy, Konduri Veeraiah and Cherlaanally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). She denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District Office of the F.C.I., Vriavawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda-Modern Rice Mill. The Regional Office of the F.C.I. used to award H&T work to private

contractors by calling tenders. The contractor used to bring labourers or the purpose of doing the works undertaken by him under H & T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H & T works in F.C.I. She never worked during January, 1977 to December, 1978 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H & T works at MRM, Mirvalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Aniaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the ALC(C). He denied that she is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 1977 to 4th December, 1978. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Section 9A of the I.D. Act. No notice of termination was given as required under Section 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Aniaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 1977 to January, 1978. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I. who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the Depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LJI page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Section 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Section 25F

and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H & T contract to private contractors for handling and transpiring of food-grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain Xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent was not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief whatsoever. He relied on the following Judgements, 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Section 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further held that right to posting is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LJI page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised responsibly and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court—Deprives them remedy available to them in law—Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection whatsoever with this petitioner, but three among these workmen approached the High Court and got the order. Wherein his Lordship directed those petitioners to approach the Labour Court under Section 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Section 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers.

Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Section 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950—83 page 152—64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are xerox copies without filing the original and like including this case in some other 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply crushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and she shall be given preference over others in the matter of employment of casual labour even though on daily wages taking her seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda Distt. However, a word of caution that this shall apply only for engaging

fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this 31st day of December, 2001.

E. ISMAIL, Presiding Officer

APPENDIX OF EVIDENCE

Witness examined for the Petitioner : Witness examined for the Respondent :

WW1 : Smt. Sultan Bee MW1 : Sri M. Siva Rama Krishna
Documents marked for the Petitioner/Union

Ex. W1 : Conciliation order of ALC(C) dt. 10-9-93.

Ex. W2 : Lr. of ALC(C) dt. 9-5-94.

Ex. W3 : Failure of conciliation report of ALC(C) vide L. No. 8(1) 1993-E3.

Ex. W4 : Union's representation dt. 16-8-93.

Ex. W5 : Order in WP No. 9008/92 dt. 16-9-97.

Ex. W6 : Copy of the attendance register of Helpers & Sweepers of FCI.

Ex. W7 : Copy of service certificate dt. 7-1-78.
Documents marked for the Respondent

Ex. M1 : Copy of the tender and the contract dated 1-3-74.

Ex. M2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).

Ex. M3 : Lr. from Government of India, Ministry of Labour dt. 17-6-97.

Ex. M4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89.

नई दिल्ली, 19 फरवरी, 2002

का. आ. 910:—औद्योगिक विवाद अधिनियम, (1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 176/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई. आर. (सी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 910.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 176/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-2-2002.

[No. L-22025/1/2002-IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT :

Shri E. I-mail, Presiding Officer.

Dated : 31st December, 2001

INDUSTRIAL DISPUTE L.C.I.D. No. 176 of 2001
(ID No. 75/99 Transferred from Labour Court-III,
Hyderabad)

BETWEEN

Sri M. Biksham,
R/o Mamidalla (Post),

Tiparti (Mdl), Nalgonda Distt. .. Petitioner.

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.2. The District Manager,
Food Corporation of India,
Nalgonda District. .. Respondents.

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan.

For the Respondent : Sri B. G. Ravindra Reddy.

AWARD

This case I.D. No. 75/99 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 176/2001. This is a case taken under Sec. 2 A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January 1977 to 4th December 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from January 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations

to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 1977 to December 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same failure of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence, the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The Corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence, the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in the forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dt. 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Mirvalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains a Modern Rice Mill, Miryalaguda and at the food storage depot at Mirvalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was the responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The Corporation never controlled or supervised the work done by the contract labour. The

petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the F.C.I. from 1-1-1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision, that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Government has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the Corporation hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri M. Biksham examined himself as WW1 and deposed facts stated in the petition in the Chief Examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register, and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The Corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance registers from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Government vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross-examination he deposed that the respondent Corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 1977 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the Corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during

the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the Corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cheriapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W5 is forged and created. That they themselves filed original of Ex. W5 before the RLC(C).

15. Sri Srivaram Krishna, the Asst. Manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised to controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-1977 to 11-9-1979 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 1977 to December, 1978 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport Workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-1996 before the ALC(C). Ex. M3 is the letter dated 17-6-1997 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W5 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 1977 to 4th December, 1978. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the ID Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W5 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 1977 to January, 1978. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I. who go against them saying that they have raised the dispute belatedly. They were working directly under the control

of second Respondent. However the said dispute was raised by more than 250 workmen; the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The Corporation never controlled or supervise the work of the Labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value to the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wages disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held a lapse of over 15 years in approaching the Court Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings

the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October 1977 to January 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in the case of LCID No. 164/2001 (I.D. No. 98/98) wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore, they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act. but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quiet till 1988. And, after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said a lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case as in some 4 or 5 cases I Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in the case, that is in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January, 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India.

He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from January, 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Government passed an order dt. 13-5-1993 rejecting the petitioner's claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Section 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 1977 to December, 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Section 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Section 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Section 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as

an employee in Food Corporation of India at any point of time. Therefore Section 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H & T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A.P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satvanaravana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dt. 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Government has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Section 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petitioner is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri P. Venkat Rao examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Government vide

Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W6 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 1977 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the Corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the Corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District Office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 1977 to December, 1978 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-1997 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2

years continuous service with the corporation from January, 1977 to 4th December, 1978. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Section 9A of the I.D. Act. No notice of termination was given as required under Section 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W4 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 1977 to January, 1978. Hence, in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Section 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Section 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document at secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Section 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wages disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd. they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the

company. He also relied on 2000(1)LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held: lapse of over 15 years in approaching the Court-Deprives them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Section 2A(2) of A.P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Section 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October, 1977 to January, 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Section 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said: lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court-III) it is only for three months two days. But it can not

be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner :	Witness examined for the Respondent :
WW1 : Sri P. Venkat Rao	MW1 : Sri M. Siva Rama Krishna
Documents marked for the Petitioner/Union	
Ex. W1 : Conciliation order of ALC(C) dt. 10-9-93.	
Ex. W2 : Lr. of ALC(C) dt. 9-5-94.	
Ex. W3 : Failure of conciliation report of ALC(C) vide Jr. No. 8(1)1993-E3.	
Ex. W4 : Union's representation dt. 16-8-93.	
Ex. W5 : Order in WP No. 9008/92 dt. 16-9-97.	
Ex. W6 : Copy of the attendance register of Helpers & Sweepers of FCI.	
Documents marked for the Respondent	
Ex. M1 : Copy of the tender and the contract dt. 1-3-74.	
Ex. M2 : Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C).	
Ex. M3 : Lr. from Government of India, Ministry of Labour dt. 17-6-97.	
Ex. M4 : Notice under Arbitration Act and Arbitration Award dt. 25-1-89.	

नई दिल्ली, 19 फरवरी, 2002

का. आ. 912.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 181/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एल.-22025/1/2002-आई. आर. (सी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

S.O. 912.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 181/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT AT HYDERABAD

PRESENT :

Shri E. ISMAIL, Presiding Officer

Dated : 31st December, 2001

Industrial Dispute L.C.I.D. No.
181 of 2001(ID No. 80/99 Transferred from Labour
Court-III, Hyderabad)

BETWEEN :

Sri G. Chaturvedi,

R/o Miryalaguda.

.. Petitioner.

AND

1. The Sr. Regional Manager,

Food Corporation of India,

HACCA Bhaban,
Hyderabad.2. The District Manager,
Food Corporation of India,
Nalgonda District. .. Respondents.

APPEARANCES :

For the Petitioner.—M/s G. Ravi Mohan.

For the Respondent.—Sri B. G. Ravindra
Reddy.

AWARD

This case I.D. No. 80/99 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 181/2001. This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are:- That the Respondent, Food Corporation of India, established MRM Milling Operations Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from Jan. 1977 to 4th Dec. 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from Jan. 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner

from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the WP the Central Govt. passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Sec. 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January '77 to December '78 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Sec. 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Sec. 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendant benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Sec. 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Sec. 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H & T contract to private contractors for handling and transporting of the

food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A. P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satyanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1-1-1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1997/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Govt. has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A. P. in WP No. 9008/92 permitted the petitioner to approach appropriate

forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation hence there is no question of violation of Sec. 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri G. Chaturvedi examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the central Govt. vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. The petitioner filed a Xerox copy of the service certificate of Sri J. Veera Swamy that he worked for the period from 1-3-76 to 31-12-77. of which original certificate is said to be deposited before the RLC(C) and that has not been marked as exhibit. Ex. W6 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross examination

he deposed that the respondent corporation is a central government corporation. He has not filed any document before the Court showing that he worked for two years from January, 77 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted, that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Kondari Veeraiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asstt. Manager, Mechanical at the District office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asstt. Manager at Miryalaguda Modern Rice Mill. The Regional office of the F.C.I. used to award H&T work to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H&T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-74 to 14-5-77 the contract was given to A. P. Transport Workers Co-operative Society, Hyderabad and from 12-11-77 to 11-9-79 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 77 to December, 78 as casual labour under F.C.I. Ex. M1 is the copy of

the tender and the contract dated 1-3-1974 wherein the work was awarded to A. P. Transport workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-96 before the ALC(C). Ex. M3 is the letter dated 17-6-97 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. in the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asstt. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before the RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 77 to 4th December, 78. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and

sweepers that is for the month from October, 77 to January, 78. Hence in view of all this voluminous evidences the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I. who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence, it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A. P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works under taken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as

casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a Government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wagers disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singareni Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribe any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court Deprives them remedy available to them in law-Loses their

rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, '77 to 4th December, '78. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection whatsoever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A. P. State Amendment under Industrial Disputes Act, 1947. I would like to clarify one position that this is Central Govt. Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Judgement held as the amendment is assented by the President of India, therefore direct applications can be entertained by the Central Govt. Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweeper attendance is from the month of October '77 to January '78, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164/2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will

it be advisable to direct the Food Corporation of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd and their workmen SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a Government department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law loses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164/2001 states that the petitioner in that case worked only for three months two days, the others are xerox copies without filing the original and in some 4 or 5 cases including this one J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164/2001 (ID 98/98 of Labour Court III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the

evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractor or other till 1984 and they approached the ALC (C) in 1988. Hence, the abovecited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result, the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken as worker of January, 77 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word of caution that this shall apply only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dictated to Kum K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner :

Witness examined for the Respondent :

WW1—Sri G. Chaturvedi

MW1—Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

Ex. W1—Conciliation order of ALC(C) dt. 10-9-93

Ex. W2—Lr. Of ALC(C) dt. 9-5-94

Ex. W3—Failure of conciliation report of ALC(C) vide Lr. No. 8(1) 1993-E3

Ex. W4—Union's representation dt. 16-8-93

Ex. W5—Order in WP No. 9008/92 dt. 16-9-97

Ex. W6—Copy of the attendance register of Helpers & Sweepers of FCI

Documents marked for the Respondent

Ex. M1—Copy of the tender and the contract dt. 1-3-74

Ex. M2—Copy of the minutes of conciliation proceedings dt. 4-4-96 and failure report of ALC(C)

Ex. M3—Lr. From Govt. of India, Min. of Labour dt. 17-6-97

Ex. M4—Notice under Arbitration Act and Arbitration Award dt. 25-1-89

नई दिल्ली, 19 फरवरी, 2002

का.आ. 913.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ सी आई. के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 182/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-02-2002 को प्राप्त हुआ था।

[सं. एन-22025/1/2002-आई.आर. (सी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 19th February, 2002

SO 913.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 182/2001) of the Central Government Industrial Tribunal-cum-LC, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 19-02-2002.

[No. L-22025/1/2002-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Dated 31st December, 2001

INDUSTRIAL DISPUTE LC ID. No 182/2001
(ID No 81/99 Transferred from Labour Court-III, Hyderabad)

BETWEEN

Sri T V N. Raju,
R/o H. No 34-286, Bapujinagar,
FCI back,
Sagar Road,
Miryalaguda,
Nalgonda District.

.. . Petitioner

AND

1. The Sr. Regional Manager,
Food Corporation of India,
HACCA Bhavan,
Hyderabad.
 2. The District Manager,
Food Corporation of India,
Nalgonda District.
- Respondents

APPEARANCES :

For the Petitioner : M/s. G. Ravi Mohan

For the Respondent : M/s. B. G. Ravindra Reddy

AWARD

This case I.D. No. 81/99 is transferred from Labour Court-III, Hyderabad in view of the Government of India, Ministry of Labour's order No. H-11026/1/2001-IR(C-II) dated 18-10-2001 and renumbered in this Court as L.C.I.D. No. 182/2001. This is a case taken under Section 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. Brief averments of the petition are : That the Respondent, Food Corporation of India, established MRM Milling Operations/Depots/Godown in 1970 carrying on Milling Operations. Initially the petitioner was engaged as contract worker in the year 1976 to December, 1976. Subsequently, the Respondent Corporation did not entrust any work to the contractors. Therefore, the petitioner was directly engaged by the 2nd Respondent namely, the District Manager, Food Corporation of India, Nalgonda District. He worked from January, 1977 to 4th December, 1978. The petitioner was directly under the control of the 2nd Respondent. The petitioner worked continuously for the above said period without any break in service. The services of the petitioner were terminated in the month of December, 1978. After the illegal termination petitioner has been making representations to the Respondent Corporation. Ultimately the petitioner managed to get a job with the contractor in Food Corporation of India. He worked in the same depot in the year 1984. The petitioner made an application to the Respondent seeking appointment on the basis of his tenure as casual labour with effect from January, 1977 till December, 1978 instead of absorbing the petitioner into service. The Respondent intentionally instructed the contractor to remove the petitioner from service. Therefore, petitioner was again out of employment. Hence, the action of Respondent in terminating the services of the petitioner with effect from 4-12-1978 without any notice and without assigning any reason, is illegal, arbitrary and unjust.

3. The petitioner filed a conciliation application before the ALC(C) on 12-4-1988 seeking absorption. The conciliation proceedings were admitted by ALC(C) but that ended in failure. Consequent on failure of the meetings ALC(C) closed the proceedings, but failed to report to the Government and the Government in turn could not refer the dispute. In this regard also the petitioner made several representations to ALC(C) to send the dispute to the Government. However no action was taken against the representation. It is submitted that the said dispute was raised by the union on behalf of 250 workmen. All the workmen were questioning the similar issue on similar grounds. The petitioner is one among those 250 workmen. And the petitioner's prayer is same as that of the other workmen.

4. Aggrieved by the action of the ALC(C) S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed WP No. 9008/92 that prior to filing of the W/P the Central Government passed an order dated 13-5-1993 rejecting the petitioners' claim on the ground that there is no relationship of the employer and employee. The Hon'ble High Court Bench in WP No. 9009/93 keeping all facts and circumstances in view and basing upon the Judgement of between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others reported in 1977 ALT Page 556 directed the three petitioners to approach the Hon'ble Labour Court under Section 2A(2) of the I.D. Act. Hence, the petitioner is also constrained to approach the Hon'ble Court along for necessary relief.

5. Retreating that he worked from January, 1977 to December, 1978 with R2 without any break in service the petitioner repeated that after extracting work from petitioner as casual labour placed him at the disposal of the various contractors to perform; the same nature of work. At the time of transferring to the fold of the contractor the petitioner was not given any notice as required under Section 9A of the I.D. Act since it related to change of service conditions. Subsequently the petitioner's services were terminated by the contractor on the advice of the Respondent.

6. The Respondent is a model employer. Hence, Respondent ought not to have terminated the services of the petitioner without complying with the provisions of principles of natural justice. The Respondent having continued the petitioner for a period of almost two years continuously ought to have given notice pay. Hence the said action amounts to violation of provision under Section 25F of the I.D. Act. It is submitted that the petitioner is the senior most employee of Corporation who worked since 1977. The corporation though terminated services of the petitioner continued the workers who are juniors to the petitioner in service. Hence the action of the Respondent amounts to discrimination.

7. The petitioner is uneducated inspite of his having made oral representations to the Respondent to reinstate him, the Respondent ignored the same. The petitioner is only earning member of the family and in view of illegal termination it has become difficult for him to eak out his livelihood and maintenance of family. The petitioner has not filed any suit or case in any forum for necessary relief.

8. Therefore, it is prayed that this Court may be pleased to set aside the oral termination order dated 4-12-1978 of the Respondent and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages and all other attendance benefits and pass such other orders as are just and necessary in the interest of justice.

9. The respondent filed a common counter stating that the petition is not maintainable under the I.D. Act neither on law nor on facts. The petitioner again approached the Labour Court under Section 2A(2) of I.D. Act as it is an amendment by the State Government. The petitioner never worked as an employee in Food Corporation of India at any point of time. Therefore Section 2A(2) is not attracted.

10. Modern Rice Mill at Miryalaguda was established in the year 1970 and commissioned from 28-5-1971. It is one of the Modern Rice Mills established all over the country. Initially Raw Milling facility was provided with a limited number of casual workers and subsequently Parboiled unit was commissioned with the increased strength of casual workers. It is submitted that the respondent used to award H&T contract to private contractors for handling and transporting of the food grains at Modern Rice Mill, Miryalaguda and at the food storage depot at Miryalaguda on tender basis. The contractor used to bring his own labour for the same and he was paid as per the scheduled rates fixed under the H&T contract depending on the work done by him. It was his responsibility as to who should be engaged and how many persons should be engaged for his work. The FCI has nothing to do with those matters. The corporation never controlled or supervised the work done by the contract labour. The petitioner might be one of those contract labourers. A. P. Transport Workers Co-operative Society Ltd., was the contractor from 22-4-1974 to 14-5-1977 and Sri V. Satvanarayana Reddy and Company was the contractor for the period from 12-11-1977 to 11-11-1979. The Respondent has no knowledge as to the service put in by the petitioner as he was never engaged as casual labour at any point of time. Therefore, the allegation that he was engaged as casual labour by the FCI from 1/1977 to 4-12-1978 is incorrect and denied.

11. Union raised an industrial dispute in connection with 256 workers and the petitioner was one among them. The ALC(C) submitted his report to the Ministry of Labour, Government of India on 13-5-1996. The Government of India by letter dated 12-6-1977/15-7-1997 conveyed its decision that the dispute is not fit for reference to the Industrial Tribunal on the ground that there is no material showing that there was relationship of employer and employee between

the petitioner and the Respondent. Petitioner has not chosen to question the above decision of the Central Government.

12. It is submitted that S/Sri N. Anjaiah, J. Veeraswamy and V. Venkateswarlu filed a WP No. 9008/92 seeking directions when the WP was pending, Government of India passed an order dated 7-4-1993 rejecting their claim which reads as thus, "The workmen has failed to produce any documentary evidence to prove that he had worked for a period of 240 days or more during the period of 12 months preceding the date of alleged disengagement of his services by the management. He was also failed to give justifiable reasons for the inordinate delay of more than 9 years in raising the dispute. Therefore, the Central Government has decided not to refer the above dispute for adjudication." The Hon'ble High Court of A.P. in WP No. 9008/92 permitted the petitioner to approach appropriate forum. Hence, the petitioner also has approached this forum.

13. The petitioner was never engaged and was never employed by the corporation, hence there is no question of violation of Section 25F even otherwise the petitioner has approached the Hon'ble Court after a lapse of 18 years and the petition is liable to be dismissed on the ground of delay and lapses. Hence, the petition may be dismissed.

14. Sri T. V. N. Raju examined himself as WW1 and deposed facts stated in the petition in the chief examination and added that he was supervising the stocks from insects by applying pesticides. Along with him there were 30 to 50 casual workers at Miryalaguda. That he used to be paid monthly salary. He worked continuously for two years. The respondent used to maintain attendance register and wages register and he used to sign on the registers. No appointment letters were issued. They were paid monthly wages. The corporation submitted attendance register to ALC(C)-II at Vidyanagar during conciliation. General Secretary Mr. Anjaiah, obtained the attendance register from ALC(C)-II subsequently their services were converted as if they were working with the contractors. No notice was served at the time of changing to the fold of contractors. They worked till 1984. They made a representation to the management for regularization of their services for which they were all terminated from services. The union raised the said dispute wherein his claim was also included vide Ex. W1 dated 1-9-1993. Ex. W2 is the letter dated 6-5-1994 of ALC(C) that there is no amicable settlement. Matter was referred to the Central Government vide Ex. W3. Ex. W4 is the representation made by the union to the ALC(C). Ex. W5 is the order in WP No. 9008/92 dated 16-9-1997. Ex. W6 is the attendance register maintained by the F.C.I. He could get the copy of this from the RLC(C) which was filed by the F.C.I. during the conciliation period. During the said period the Depot Manager was one Mr. Srinivasa Rao. The management produced the relevant record such as attendance register, payment register etc., during the conciliation period. In the cross examination he deposed that the respondent corporation is a Central Government Corporation. He has not filed any document before the Court showing that he worked for two years from January, 1977 continuously under the respondent. He denied that there is no practice of engaging casual labourers directly by the corporation. It is true that he filed the present case after 20 years. He has not filed any representation or letter addressed to the Respondent Corporation alleging that they worked in F.C.I. and they were terminated from service at any point of time during the period from 1977 onwards. He denied that only contractors used to pay him. He admitted that he did not file any document showing that he received any amount from the corporation. After 1978, he worked under the contractors namely, S/Sri V. Satyanarayana Reddy, Konduri Veerajiah and Cherlapally Ram Murthy etc. It is true that ALC(C) and conciliation officer rejected the reference on the ground that the dispute raised by the union was belated. And there is no relationship of employer and employee. That union has not filed any WP against the said proceedings of ALC(C). He denied that Ex. W6 is forged and created. That they themselves filed original of Ex. W6 before the RLC(C).

15. Sri Sivaram Krishna, the Asst. Manager, Mechanical at the District Office of the F.C.I., Vijayawada deposed as MW1 and stated that 22-12-1977 to June, 1991 he worked as Asst. Manager at Miryalaguda Modern Rice Mill. The Regional Office of the F.C.I. used to award H&T works to private contractors by calling tenders. The contractor used to bring labourers for the purpose of doing the

works undertaken by him under H&T contract. The contractor was being paid as per the scheduled rates fixed for H & T contracts depending on the work done by him. F.C.I. has nothing to do with the engagement of labourers and work done by the labourers was not supervised or controlled by any of the officials of the F.C.I. The contractor used to get the work done as desired by them. During the period from 22-4-1974 to 14-5-1977 the contract was given to A.P. Transport Workers Co-operative Society, Hyderabad and from 12-11-1977 to 11-9-1979 it was given to Sri V. Satyanarayana Reddy. He can not say whether the petitioner was employed by the said contractor. There is no practice of engaging casual labour for H&T works in F.C.I. He never worked during January, 1977 to December, 1978 as casual labour under F.C.I. Ex. M1 is the copy of the tender and the contract dated 1-3-1974 wherein the work was awarded to A.P. Transport workers Co-operative Society for H&T works at MRM, Miryalaguda. The petitioner was one of the 256 workers who raised industrial dispute. ALC(C) submitted a failure report Ex. M2 is the copy of the minutes of conciliation proceedings held on 4-4-1996 before the ALC(C). Ex. M3 is the letter dated 17-6-1997 issued by the Government of India expressing that the industrial dispute is not fit for reference. As none of the labourers were engaged directly by F.C.I. nor they worked for 240 days or more. This order has not been questioned in the High Court by the concerned workman. Ex. W6 was not maintained by the F.C.I. In the cross examination he deposed that he used to look after the maintenance and repairs of the machinery at MRM unit for handling and transport used to engage a contractor. All the other works were carried through contractor. They have not filed any license before this Court. He is not the concerned man to appoint a contractor. They did not maintain any register of the workers who are employed by the contractor. Work relating to the depot was being looked after by Sri Ratna Swamy who was the Asst. Manager. He denied that those contractors were not there during the said period. It is true that all these workmen have raised the dispute before the ALC(C). He has not attended the conciliation proceedings. In the said reference petitioner is one such. That S/Sri V. Venkateswarlu, N. Anjaiah and J. Veera Swamy filed a writ No. 9008/92. It is incorrect that Ex. W5 is filed before RLC(C). He denied that he is entitled for any relief.

16. It is argued by the Learned Counsel for the petitioner that this is a case where this petitioner has been made to run from pillar to post. The petitioner has put in almost 2 years continuous service with the corporation from January, 1977 to 4th December, 1978. That constantly they have been put under one or another contractor without giving any notice of change as envisaged under Sec. 9A of the I.D. Act. No notice of termination was given as required under Sec. 25F or any wages paid. The petitioner has marked Ex. W1 which is addressed to Anjaiah by ALC(C) about conciliation proceedings. Ex. W2 is also served to the said effect. Ex. W3 is the failure report of the ALC(C). Ex. W6 is the Xerox copy of the attendance register, which shows that they are the helpers and sweepers that is for the month from October, 1977 to January, 1978. Hence, in view of all this voluminous evidence the mere fact that these helpless illiterate persons who were again working till 1984 under contractors after having worked with the F.C.I., who go against them saying that they have raised the dispute belatedly. They were working directly under the control of second Respondent. However the said dispute was raised by more than 250 workmen, the petitioner was among those 250 workmen. That the petitioner was looking after stock by spraying pesticides etc. That MW1 admitted in the cross examination he has not filed any license of the contractor and that it is true that all these workmen who worked in depot and other centres have raised the dispute before the ALC(C). This shows that they worked in the depot. Further he is not connected with the said work hence it is submitted that petitioner is to be reinstated with all back wages etc. The petitioner relied on a Judgement in WP No. 28 of 1993 of the Hon'ble A.P. High Court wherein the petitioner was appointed by the orders of the High Court. He also relied on 2001 LLJ page 201 wherein it was held that the petitioner did complete more than 240 days of service, that Sec. 25F was not complied with, the termination was therefore bad. He also relied on 1996 (3) ALD page 955 wherein it was held that petitioner was appointed on tenure basis giving artificial breaks. Petitioner's services terminated refusing renewal and

another person appointed. It was held that the petitioner is entitled to protection under Sec. 25F and 25H. He also relied on (2001) 1 Supreme Court Cases page 61, where it was held that the absentee workman was required to join duty by a specific date but when attempted to join duty was prevented doing so. Held the said standing order would not be used to effect automatic termination of service. Therefore prays the petitioner to be reinstated.

17. The respondent Counsel argued that petitioner never worked in F.C.I. at any point of time. That it has come in the evidence that F.C.I. used to award H&T contract to private contractors for handling and transporting of food grains. The contractors used to bring their labour for the purpose of doing the works undertaken by the contractor. The corporation never controlled or supervise the work of the labour of the contractor that there was two different contractors during the said period. The F.C.I. has no knowledge whether the petitioner was engaged under the contractor. The petitioner is trying to project himself as casual labour with certain xerox papers which have no value in the absence of originals. The present case is filed in the year 1998 after a lapse of 22 years which is a long period. And that there is no relationship of employer and employee. When the respondent has not appointed there is no question of dismissing. Hence, the petitioner is not entitled for any relief what so ever. He relied on the following Judgements. 1992 2 ALT page 171 wherein it was held failure to explain satisfactorily that original document was lost or that it is not in a position to have the same. Court rejecting permission to file Xerox copy of document as secondary evidence justified. He also relied on 2001 2 ALD page 205 wherein it was held daily wage employees cannot claim regular employment, their disengagement from service cannot be construed as violation of Sec. 25F. He also relied on (1997) 4 Supreme Court Cases page 391 wherein their Lordships held dispensing with services of persons engaged on daily wages in a government department therefore is not a retrenchment. Further, held that right to postings is not available. Further held that daily wages disengagement after completion of work have no right to post. Their Lordships further held that concept of retrenchment cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees had no right to the posts. He also relied on 1989 2 ALD page 420 Division Bench it was held that contract labour working as Hamali Employee contractors of Singarani Collieries Co. Ltd., they are not entitled to be absorbed as badli fillers of the company without their names being sponsored by employment exchange. So further held such workmen employed through a contractor does not become employees of the company. He also relied on 2000(1) LLJ page 561 wherein the Lordships held Law does not prescribed any time limit for the appropriate Government to exercise its powers under Sec. 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonable and not in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after lapse of about 7 years of order dismissing the respondent from service. He also relied on 1993 FLR (67) page 70 wherein it was held : lapse of over 15 years in approaching the Court-Deprive them remedy available to them in law-Loses their rights as well. So he submits that in lieu of this clear rulings the petitioners even if they had any right and if it is admitted for arguments sake the right is lost by efflux of time.

18. It may be seen that this case has a chequered history. The allegation is that the petitioner in this case and 43 other cases worked from January, 1977 to 4th December, 1978. They have approached for the first time on 12-4-1988 seeking absorption. It is very easy for the F.C.I. to say that they have no connection what so ever with this petitioner, but he is one of the candidates who approached the High Court and got the order. Wherein his Lordship directed the petitioner to approach the Labour Court under Sec. 2A(2) of A.P. State Amendment under Industrial Disputes Act. 1947. I would like to clarify one position that this is Central Government Industrial Tribunal-cum-Labour Court and the amendment of Sec. 2A(2) is of the State Government. However, as stated in the beginning of the case itself the Hon'ble High Court by a Division Bench Indecment held as the amendment is assented by the President of India, therefore

direct applications can be entertained by the Central Government Industrial Tribunal-cum-Labour Court. Accordingly, this case was filed on 11-3-1998. Without going into much elaborate discussions it is an admitted fact that they are casual labourers. Granted that the arguments of the Learned Counsel for the petitioners are correct and the very attendance register which shows daily rated sweepers attendance is from the month of October 1977 to January 1978, that is only for 4 months. And those who have produced service certificates are all xerox copies except one in L.C.I.D. No. 164|2001 wherein the original certificate filed showing that he worked from 1-9-1977 to 2-12-1977 as a daily rated casual helper. No doubt, it is alleged that they continued to work under contractors as they were made over to contractors without following Sec. 9A. Therefore they did not approach the conciliation officer. Even if that is taken as true and all the Xerox copies of the service certificates produced in so many cases are also taken to be true. Does it improve the situation? It has come in evidence that they worked as daily rated casual labour. No doubt, no limitation is prescribed under the I.D. Act, but, all cases the question of reasonableness in approaching the proper authorities also has to be seen. They kept quite till 1988. And after all the writs etc. almost 22 years have passed. Will it be advisable to direct the Food Corpn. of India to take them back? The Learned Counsel for the respondent have referred to 2000(1) LLJ page 561. Their Lordships refused to condone the delay of 7 years. He also relied on Shalimar Works Ltd. and their workmen SCLF 1950-83 page 152-64 wherein their Lordships held that where there was wholesale discharge of workmen their Lordships held four years delay is sufficient not to grant reinstatement. Further (1977) 4 Supreme Court Cases page 391 their Lordships held that dispensing with services of persons engaged on daily wages in a governmental department is not a retrenchment. That their dismissal cannot be treated as retrenchment. He also relied on 1993 FLR where said : lapse of over 15 years deprives of them of the remedy available to have and in law losses their right as well. No doubt, Learned Counsel for the petitioner tried to distinguish between those who produced service certificates and those who did not produce service certificates. I am afraid that also will not do any good to petitioners and does not improve their case because the original certificate marked in L.C.I.D. No. 164|2001 states that the petitioner in that case worked only for three months two days, the others are Xerox copies without filing the original and in some 4 or 5 cases J. Veeraswamy's certificate is filed although he himself did not file his service certificate.

19. In conclusion, petitioners have not proved by any reliable documentary evidence that they worked under the F.C.I. even in cases where service certificate is filed. For example as stated in L.C.I.D. No. 164|2001 (ID 98|98 of Labour Court-III) it is only for three months two days. But it cannot be simply brushed aside that petitioner has nothing to do with the F.C.I. Otherwise, all these petitioners filing writ in the Hon'ble High Court etc. would be a futile exercise. They did work for F.C.I. no doubt perhaps under different contractors and more over they say that they worked till 1984 under various contractors that they made a representation to the management for regularization of their services for which again they were removed by contractors under the direction of F.C.I. asking them not to engage them. So it can safely be concluded that these persons did work for F.C.I. although under various contractors but the petitioner have failed to prove by any satisfactory evidence that they worked directly at the F.C.I. Seeing the evidence on record the exhibits, it can safely be concluded that they did work for the F.C.I. although through contractors. More so in view of the exhibits filed by the respondent which shows that they were contractors during the relevant period. No doubt, there is delay but not of ten years. Because, they continued working under some contractors or other till 1984 and they approached the ALC(C) in 1988. Hence, the above-cited Supreme Court's cases are not completely applicable to the facts of these cases. No doubt, their prayer cannot be granted because as stated earlier there is no proof that they worked under the F.C.I. But, however, in all these cases they are entitled for some relief.

20. In the result the respondent No. 2 is directed that he is free to employ any person as casual labour who is working earlier to this petitioner. But once employment is given to such persons, petitioner's services shall be taken to worker's

of January 1977 and he shall be given preference over others in the matter of employment of casual labour even though on daily wages taking his seniority as employee of January, 1977 either at Miryalaguda or at Nalgonda District. However, a word caution that this shall only for engaging fresh casual labours from today and there shall be no retrenchment in view of this award.

Award passed accordingly and pronounced in the open Court. Transmit.

Dated to Kum. K. Phani Gowri, Personal Assistant, transcribed by her corrected by me on this the 31st day of December, 2001.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner : Witness examined for the Respondent:

WW1 : Sri T.V.N. Raju MW1 : Sri M. Siva Rama Krishna

Documents marked for the Petitioner/Union

- Ex. W1 : Conciliation order of ALC(C) dt. 10-9-93.
- Ex. W2 : Lr. of ALC(C) dated 9-5-94.
- Ex. W3 : Failure of conciliation report of ALC(C) vide Lr. No. 8(1)1993-E3.
- Ex. W4 : Union's representation dated 16-8-93.
- Ex. W5 : Order in WP No. 9008/92 dated 16-9-97.
- Ex. W6 : Copy of the attendance register of Helpers & Sweepers of FCI.

Documents marked for the Respondent

- Ex. M1 : Copy of the tender and the contract dated 1-3-1974.
- Ex. M2 : Copy of the minutes of conciliation proceedings dated 4-4-96 and failure report of ALC(C).
- Ex. M3 Lr. From Govt. of India, Min. of Labour dated 17-6-97.
- Ex. M4 : Notice under Arbitration Act and Arbitration Award dated 25-1-89.

नई दिल्ली, 22 फरवरी, 2002

का.आ. 914.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल के पंचाट (संदर्भ संख्या 73/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-02-2002 को प्राप्त हुआ था।

[सं. एल-22012/428/98-आईआर. (सी. II)]

एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 22nd February, 2002

S.O. 914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby pub-

lishes the award (Ref. No. 73/1999) of the Central Government Industrial Tribunal-cum-LC, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 20-02-2002.

[No. L-22012/428/98-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT :

Shri Ramjee Pandey, Presiding Officer

REFERENCE NUMBER 73 of 1999

PARTIES :

Agent, Begunia Project,
C. V. Area, Barakar.

M/s. B.C.C.L. .. Management.

Vrs.

Shri Jhari Mahato. .. Workman.

REPRESENTATION :

For the Management.—Shri P. K. Das,
Advocate.

For the Union (Workman).—None.

INDUSTRY : : Coal.

STATE . West Bengal.

Dated 4th February, 2002

AWARD

In exercise of powers conferred by the clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947. Govt. of India through the Ministry of Labour by its Order No. L-22012/428/98-IR(CM-II) dated 09-07-1999 has referred the following dispute for adjudication by this Tribunal :—

“Whether the action of the Agent, Begunia Project C. V. Area, P. O. Barakar, Distt. Burdwan for not regularising the services of Sh. Jhari Mahato in the post of Watchman is justified? If not, to what relief is the workman entitled?”

After receipt of the reference, summons were sent to the parties by registered post. In response to the summons the management appeared through Shri P. K. Das, Advocate, but despite the fact that summon by registered post was served to the Union on 21-09-2001 none appeared on behalf of the Union even after several adjournments.

In view of the fact that none appeared on behalf of the Union (workman) even after service of summon and several adjournments it appears that the Union has got no interest with the dispute. And hence No Dispute Award is passed.

Sd/-

RAMJEE PANDEY, Presiding Officer

नई दिल्ली, 22 फरवरी, 2002

का.आ. 915.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल.के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण असनसोल के पंचाट (संदर्भ संख्या 55/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-02-2002 को प्राप्त हुआ था।

[सं. एल 22012/299/98-आई.आर. (सी. II)]
एन. पी. केशवन, डेस्क अधिकारी

New Delhi, the 22nd February, 2002

S.O. 915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/1999) of the Central Government Industrial Tribunal-cum-LC, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 20-02-2002.

[No. L-22012/299/98-IR(C-II)]
N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUS-
TRIAL TRIBUNAL-CUM-LABOUR
COURT, ASANSOL

PRESENT :

Shri Ramjee Pandey, Presiding Officer

REFERENCE NUMBER 55 of 1999

PARTIES :

Agent. Bejdih Methani Colliery of M/s. E. C.
Ltd. . . Management.

Vrs.

Shri Dinanath Kahar. . . Workman.

REPRESENTATION :

For the Management.—Shri P. K.
Goswami, Advocate.

For the Workman. (Union).—None.

INDUSTRY : Coal. STATE : West Bengal.

Dated 30th January, 2002

AWARD

In exercise of powers conferred by the clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Dispute Act, 1947, Govt. of India through the Ministry of Labour by its Order No. L-22012/299/98-IR(CM-II) dated 25-05-1999 has referred the following dispute for adjudication by this Tribunal :—

“Whether the action of the management of Bejdih Colliery in dismissing Sh. Dinanath Kahar w.e.f. 01-06-1996 is justified? If not, to what relief is the workman entitled?”

After receipt of the reference summons were sent to the parties by registered post, and the parties were directed to appear and file their respective written statements. In pursuance to the summon the management appeared through its Lawyer Shri P. K. Goswami. From perusal of record it is apparent that summon by registered post has been served upon the Union (Workman) on 19-09-2001 and despite several adjournments none appeared on behalf of the workman, which indicates that now the workman or the Union has got no interest with the dispute. Although management appeared through its Lawyer but despite several adjournment no written statement has been filed by the management also. And hence it can be easily inferred that the parties have no interest with the dispute.

In view of the above facts it is clear that the parties are not ready to contest the dispute and hence a no dispute award is being passed.

RAMJEE PANDEY, Presiding Officer

(रोजगार एवं प्रशिक्षण महानिदेशालय)

नई दिल्ली, 25 फरवरी, 2002

का. आ. 916.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित, 1987) के नियम 10 के उप नियम (2) एवं (4) के अनुसरण में एतद्वारा रोजगार एवं प्रशिक्षण महानिदेशालय (श्रम मंत्रालय) के निम्नलिखित अधीनस्थ कार्यालयों को जिनके कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :

(क) विकलांग व्यावसायिक पुनर्वास केन्द्र, हैदराबाद।

(ख) क्षेत्रीय शिक्षता प्रशिक्षण निदेशालय, हैदराबाद।

[सं. डी.जी.ई.टी.-11017/2/99-हिन्दी]

एन. लंका, उप सचिव

(Directorate General of Employment & Training)

New Delhi. the 25th February, 2002

S. O. 916.—In pursuance of sub-rule (2) and (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976 (As Amended, 1987), the Central Government hereby notifies the following subordinate offices of Directorate General of Employment & Training (Ministry of Labour), the staff whereof have acquired the working knowledge of Hindi. ;

1. Regional Directorate of Apprenticeship Training, Hyderabad.
2. Vocational Rehabilitation Centre for Handicapped, Hyderabad.

[No. DGE&T-11017/2/99-Hindi]

N. LANKA, Dy. Secy.

